

**H.R. 884, "WESTERN SHOSHONE
CLAIMS DISTRIBUTION ACT;"
AND H.R. 1409, "EASTERN
BAND OF CHEROKEE INDIANS
LAND EXCHANGE ACT OF
2003."**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Wednesday, June 18, 2003

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LEGISLATIVE HEARING ON H.R. 884, TO PROVIDE FOR THE USE AND DISTRIBUTION OF THE FUNDS AWARDED TO THE WESTERN SHOSHONE IDENTIFIABLE GROUP UNDER INDIAN CLAIMS COMMISSION DOCKET NUMBERS 326-A-1, 326-A-3, AND 326-K, AND FOR OTHER PURPOSES. "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT;" AND H.R. 1409, TO PROVIDE FOR A FEDERAL LAND EXCHANGE FOR THE ENVIRONMENTAL, EDUCATIONAL, AND CULTURAL BENEFIT OF THE AMERICAN PUBLIC AND THE EASTERN BAND OF CHEROKEE INDIANS, AND FOR OTHER PURPOSES. "eastern band of cherokee indians land exchange act of 2003."

**Wednesday, June 18, 2003
U.S. House of Representatives
Committee on Resources
Washington, DC**

The Committee met, pursuant to notice, at 10:09 a.m., in room 1324, Longworth House Office Building, Hon. Richard W. Pombo (Chairman of the Committee) presiding.

Present: Representatives Pombo, Duncan, Jones, Gibbons, Hayworth, Kildee, Faleomavaega, Pallone, Christensen, Inslee, Napolitano, Tom Udall, Bordallo, and Baca.

STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee will come to order.

The Committee is meeting today to hear testimony on H.R. 1409, a bill to provide for Federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians; and H.R. 884, to provide for the use and distribution of the funds awarded to the Western

Shoshone identifiable group under the Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, and 326-K.

Under Rule 4G of the Committee rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

Today's hearing concerns two bills affecting two groups of Native Americans. They are H.R. 1409, sponsored by Congressman Charles Taylor of North Carolina, and H.R. 884 by the Vice Chairman of the Committee, Jim Gibbons of Nevada.

H.R. 1409 provides a land exchange between the National Park Service and the Eastern Band of Cherokee Indians whose reservation is located in western North Carolina. The purpose of the land swap is to facilitate the construction of a new school badly needed by the Cherokee people. Under the legislation, the Eastern Band would give the American public high-value, pristine land along the Blue Ridge Parkway in exchange for lower-value land called the Ravensford tract, which is adjacent to the Cherokee Reservation called the Qualla Boundary. The Ravensford tract would be held in trust and added to the reservation. The amount of land the Eastern Band acquires is only 143 acres, but it has attractive features making it ideal for locating a new school. The witnesses from the Eastern Band will explain the need for a new school and why this tract is a logical site for it.

It should also be noted that the Ravensford tract was supposed to be conveyed to the Eastern Band in the 1940's as part of a deal which enabled the construction of the Blue Ridge Parkway through their reservation. This tract is part of the ancestral homeland of the Cherokee people, but the Congress, for no known reason, decided to delete this part of the deal after it was agreed to. That was wrong, and I am puzzled why anyone today would reject the moral right of the Cherokee to reacquire their ancestral land through an exchange which adds more value to the National Park System.

Under this bill, the Park Service will add 218 acres of pristine land to the Blue Ridge Parkway. Many of the nearby lands are being developed. Adding this parcel to the parkway would preserve a pristine view from an overlook on the road. I think Congressman Taylor has written an outstanding bill that will benefit the American public which uses the Blue Ridge Parkway and the Eastern Band of Cherokees who need a new school for future leaders of the Indian country, North Carolina, and the United States of America.

The CHAIRMAN. The second bill which is the subject of this hearing is H.R. 884, sponsored by the gentleman from Nevada and the Vice Chairman of the Committee. This bill provides for the distribution of more than \$140 million to the Western Shoshone people. This is money which was awarded to the Indian Claims Commission over two decades ago to Western Shoshone people who sought compensation for a taking of their aboriginal lands in Nevada, California, Idaho, and Utah. The bulk of this money, \$142 million, would be distributed on a per capita share basis to the Western Shoshone of at least one-quarter degree blood. About \$1.3 million would be placed in an educational trust fund for the benefit

of the Shoshone people. The judgment fund has been sitting in a treasury account gathering interest for over 20 years because no plan for distributing it has ever been implemented. This simply provides for distribution of the funds. Without this legislation, over \$140 million will continue to be out of reach of the people to whom it rightfully belongs. While there are some people who continue to pursue the Shoshone land claim, it is not right to hold these funds hostage in the meantime.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard W. Pombo, Chairman,
Committee on Resources, on H.R. 1409 and H.R. 884**

The Committee will receive testimony on two bills affecting Native Americans. They are H.R. 1409, sponsored by Congressman Charles Taylor of North Carolina, and H.R. 884, by the Vice-Chairman of the Committee, Jim Gibbons of Nevada.

H.R. 1409 provides a land exchange between the National Park Service and the Eastern Band of Cherokee Indians, whose reservation is located in western North Carolina. The purpose of the land swap is to facilitate the construction of a new school badly needed by the Cherokee people.

Under the legislation, the Eastern Band would give the American public high-value, pristine land along the Blue Ridge Parkway in exchange for lower-value land called the "Ravensford Tract," which is adjacent to the Cherokee Reservation, called the Qualla Boundary. The Ravensford Tract would be held in trust and added to the Reservation.

The amount of land the Eastern Band acquires is only 143 acres, but it has attractive features making it ideal for locating a new school. The witnesses from the Eastern Band will explain the need for a new school and why this tract is the logical site for it.

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This tract is part of the ancestral homeland of the Cherokee people. But the Congress, for no known reason, decided to delete this part of the deal after it was agreed to. This was wrong, and I'm puzzled why anyone today would reject the moral right of the Cherokee to re-acquire their ancestral lands through an exchange which adds more value to the National Park System.

Under this bill, the Park Service will add 218 acres of pristine land to the Blue Ridge Parkway. Many of the nearby lands are being developed. Adding this parcel to the Parkway would preserve a pristine view from an overlook on the road.

I think Congressman Taylor has written an outstanding bill that will benefit the American public which uses the Blue Ridge Parkway ... and the Eastern Band of Cherokees who need a new school for future leaders of Indian Country, North Carolina, and the United States of America.

The second bill which is the subject of this hearing is H.R. 884, sponsored by the gentleman from Nevada and Vice Chairman of the Committee.

This bill provides for the distribution of more than \$140 million to the Western Shoshone people. This is money that was awarded by the Indian Claims Commission over two decades ago to Western Shoshone people who sought compensation for a taking of their aboriginal lands in Nevada, California, Idaho and Utah.

The bulk of this money—\$142 million—would be distributed on a per capita share basis to Western Shoshone of at least 1/4 degree blood. About \$1.3 million would be placed in an education trust fund for the benefit of the Shoshone people.

This judgment fund has been sitting in a Treasury account gathering interest for over 20 years because no plan for distributing it has ever been implemented. This bill simply provides for a distribution of the funds.

Without this legislation, over \$140 million will continue to be out of reach of the people to whom it rightfully belongs. While there are some people who continue to pursue the Shoshone land claim, it isn't right to hold these funds hostage in the meantime.

The CHAIRMAN. I would like to now recognize the Ranking Minority Member, Mr. Kildee, for any statement he may make.

**STATEMENT OF THE HON. DALE E. KILDEE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
MICHIGAN**

Mr. KILDEE. Well, thank you very much, Mr. Chairman. I want to thank you for holding this hearing today on H.R. 1409 and H.R. 884.

H.R. 1409 is a land exchange bill which will allow the Eastern Band of Cherokee to build new schools for their children. I also want to welcome my friend, Chief Leon Jones, Principal Chief of the Eastern Band of Cherokee Indians, who is here to testify on behalf of this legislation.

One of the central promises the U.S. Government made to the Indian Nations in their treaties was the promise of education for their people. Time and time again, our Government has failed to live up to that promise.

Mr. Chairman, I have visited several of the tribal schools in my 26 years here in Congress, and I can honestly say that when the Federal Government has run those schools, they have not always done a very good job. I have visited schools that a Federal judge would not let us keep prisoners in. As a matter of fact, we had to destroy a jail in Flint, Michigan, because the Federal judge said it was unfit for human habitation, and that jail was in better shape than some of the Indian schools I have visited.

So the Federal Government has not done a good job. This nation, the Cherokee Nation, wants to build schools for their children, and I think we should work with them.

It is unacceptable that we do not encourage them by legislation to do that which they choose to do under their sovereignty. In my years of elective office, I have enjoyed the support of the environmental community for my commitment to protecting our Nation's precious resources. That is something of which I am very proud. In fact, I wrote the law establishing one of the largest Federal wilderness areas east of the Mississippi River. I have also drafted laws protecting some of our Nation's most threatened wild and scenic rivers. I have set aside a thousand miles of rivers in Michigan as wild and scenic rivers. And I know that some of my environmental friends oppose this legislation and feel that no land should ever be exchanged from the National Park Service. But in this instance, I must disagree. We have made commitments to this tribe, this sovereign nation, and we should keep that commitment.

One fact remains indisputable in this case. Before there was a park on the Ravensford tract, that land belonged to the sovereign Cherokee Nation, and thousands of Cherokee people were forcibly removed from this land during the infamous Trail of Tears, which, in my view, is one of the most shameful acts in our country's history.

Mr. Chairman, I support this legislation because I believe it will give back to the tribe what was traditionally theirs and unite their reservation which has significant cultural and historic meaning to the Cherokee people. I have seen pictures of this land, and I am convinced that the land exchange will not endanger the integrity of this park. As a matter of fact, I think the park will be enhanced by this exchange.

I understand that the tribe has agreed to exchange some other valuable property that was identified by the National Park Service, and this is a very reasonable approach. And when we find this type of reasonable approach, I think Congress should give its imprimatur to that.

Mr. Chairman, I also would like to speak on H.R. 884, a bill which would provide for the use and distribution of funds awarded the Western Shoshone Indians under a 1979 ruling by the Indian Claims Commission. The award, which today includes over \$130 million, is compensation for what is called an encroachment by the United States onto Western Shoshone ancestral lands. Considering the riches in much of the land, I do not think anyone could characterize this as a good deal for the Western Shoshone. But it was what was litigated and determined to be legal. Disputes and disagreement among the Western Shoshone and between the bands in the United States has kept the monies from being distributed. Congress has also clearly played a part in holding up the distribution of these judgment awards.

I have served on this Committee now for over two decades, and during this time several proposals have been submitted providing for distribution of these funds. We have seen everything from a total straight per capita payment to several funds being set up for specific purposes, to proposals with overly generous attorneys' fees attached. Each proposal came with a promise of wide support throughout the Western Shoshone. And each proposal failed to be enacted because ultimately not enough members were comfortable with the provisions and the support behind them.

Many Western Shoshone Indians want these awards distributed and are frustrated with the delay. They want to receive the funds so they can pay a few bills and move onto their lives. However, for many other Western Shoshone Indians, no monetary compensation can satisfy their hope for the return of some of the Western Shoshone ancestral lands.

Many on this side of the issue believe that accepting the awards money would be supporting the Federal actions that took their land. Today, we are again faced with a proposal to distribute judgment award funds to the Western Shoshone Indians. I look forward to hearing from our witnesses and learning more about the activities which have brought us up to this point.

I want to thank you, Mr. Chairman, for bringing this bill up for a hearing at this time. Because of the long and somewhat tumultuous history, I believe we must move carefully and deliberately on this bill. Bringing the bill up during the first session gives us time to study the issue and fully understand its ramifications.

Again, Mr. Chairman, I thank you for the time.

[The prepared statements of Mr. Kildee follow:]

**Statement of The Honorable Dale Kildee, a Representative in Congress
from the State of Michigan, on H.R. 884**

MR. CHAIRMAN, THANK YOU FOR HOLDING THIS HEARING TODAY ON H.R. 884, A BILL WHICH WOULD PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE WESTERN SHOSHONE INDIANS UNDER A 1979 RULING BY THE INDIAN CLAIMS COMMISSION. THE AWARD, WHICH TODAY INCLUDES OVER \$130 MILLION, IS COMPENSATION FOR WHAT IS CALLED AN "ENCROACHMENT" BY THE UNITED STATES ONTO WESTERN SHOSHONE ANCESTRAL LANDS.

CONSIDERING THE RICHES IN MUCH OF THE LAND, I DON'T THINK ANYONE WOULD CHARACTERIZE THIS AS A GOOD DEAL FOR THE WESTERN SHOSHONE BUT IT IS WHAT WAS LITIGATED AND DETERMINED TO BE LEGAL.

DISPUTES AND DISAGREEMENTS AMONG THE WESTERN SHOSHONE AND BETWEEN THE BANDS AND THE UNITED STATES HAS KEPT THE MONIES FROM BEING DISTRIBUTED. CONGRESS HAS ALSO CLEARLY PLAYED A PART IN HOLDING UP THE DISTRIBUTION OF THESE JUDGMENT AWARDS.

I'VE SERVED ON THIS COMMITTEE FOR OVER TWO DECADES AND DURING THIS TIME SEVERAL PROPOSALS HAVE BEEN SUBMITTED PROVIDING FOR DISTRIBUTION OF THESE FUNDS. WE'VE SEEN EVERYTHING FROM A TOTAL STRAIGHT PER CAPITA PAYMENT, TO SEVERAL FUNDS BEING SET UP FOR SPECIFIC PURPOSES, TO PROPOSALS WITH OVERLY GENEROUS ATTORNEY'S FEES ATTACHED. EACH PROPOSAL CAME WITH THE PROMISE OF WIDE SUPPORT THROUGHOUT THE WESTERN SHOSHONE.

YET EACH PROPOSAL FAILED TO BE ENACTED BECAUSE ULTIMATELY NOT ENOUGH MEMBERS WERE COMFORTABLE WITH THE PROVISIONS AND THE SUPPORT BEHIND THEM.

MANY WESTERN SHOSHONE INDIANS WANT THESE AWARDS DISTRIBUTED AND ARE FRUSTRATED WITH THE DELAY. THEY WANT TO RECEIVE THE FUNDS SO THEY CAN PAY A FEW BILLS AND MOVE ON WITH THEIR LIVES.

HOWEVER, FOR MANY OTHER WESTERN SHOSHONE INDIANS, NO MONETARY COMPENSATION CAN SATISFY THEIR HOPE FOR THE RETURN OF SOME OF THE WESTERN SHOSHONE ANCESTRAL LANDS. MANY ON THIS SIDE OF THE ISSUE BELIEVE THAT ACCEPTING THE AWARD MONIES WOULD BE SUPPORTING THE FEDERAL ACTIONS THAT TOOK THEIR LAND.

TODAY WE ARE AGAIN FACED WITH A PROPOSAL TO DISTRIBUTE JUDGMENT AWARD FUNDS TO THE WESTERN SHOSHONE INDIANS. I LOOK FORWARD TO HEARING FROM OUR WITNESSES AND LEARNING MORE ABOUT THE ACTIVITIES WHICH HAVE BROUGHT U.S. TO THIS POINT.

I WANT TO THANK CHAIRMAN POMBO FOR BRINGING THIS BILL UP FOR A HEARING AT THIS TIME.

BECAUSE OF THE LONG AND SOMEWHAT TUMULTUOUS HISTORY, I BELIEVE WE MUST MOVE CAREFULLY AND DELIBERATIVELY ON THIS LEGISLATION. BRINGING THE BILL UP DURING THE FIRST SESSION GIVES U.S. TIME TO STUDY THE ISSUE AND FULLY UNDERSTAND ITS RAMIFICATIONS.

THANK YOU.

**Statement of The Honorable Dale E. Kildee, a Representative in Congress
from the State of Michigan, on H.R. 1409**

MR. CHAIRMAN, I WANT TO THANK YOU FOR HOLDING THIS HEARING TODAY ON H.R. 1409, A LAND EXCHANGE BILL WHICH WILL ALLOW THE EASTERN BAND OF CHEROKEE TO BUILD NEW SCHOOLS FOR THEIR CHILDREN. I ALSO WANT TO WELCOME MY FRIEND, CHIEF LEON JONES, PRINCIPAL CHIEF OF THE EASTERN BAND OF CHEROKEE INDIANS, WHO IS HERE TO TESTIFY ON BEHALF OF THIS LEGISLATION.

ONE OF THE CENTRAL PROMISES THE U.S. GOVERNMENT MADE TO THE INDIAN NATIONS IN THEIR TREATIES WAS THE PROMISE OF EDUCATION FOR THEIR PEOPLE. TIME AND TIME AGAIN, OUR GOVERNMENT HAS FAILED TO LIVE UP TO THAT PROMISE.

MR. CHAIRMAN, I HAVE VISITED SEVERAL OF THE TRIBAL SCHOOLS IN MY 26 YEARS IN CONGRESS, AND I CAN HONESTLY SAY THAT SO MANY OF THESE SCHOOLS WERE IN SUCH DISREPAIR THAT A JUDGE WOULDN'T ALLOW CRIMINALS TO STAY IN THEM.

THIS IS THE KIND OF ENVIRONMENT IN WHICH MANY OF OUR INDIAN CHILDREN HAVE BEEN FORCED TO LEARN.

THAT IS UNACCEPTABLE. THROUGH THIS LEGISLATION WE CAN HELP THE EASTERN BAND OF CHEROKEE MOVE FORWARD WITH ITS COMMITMENT TO EDUCATE ITS CHILDREN.

IN MY YEARS OF ELECTED OFFICE, I HAVE ENJOYED THE SUPPORT OF THE ENVIRONMENTAL COMMUNITY FOR MY COMMITMENT TO PRO-

TECTING OUR NATION'S PRECIOUS RESOURCES. THAT IS SOMETHING FOR WHICH I AM VERY PROUD.

IN FACT, I WROTE THE LAW ESTABLISHING ONE OF THE LARGEST FEDERAL WILDERNESS AREAS EAST OF THE MISSISSIPPI RIVER.

I HAVE ALSO DRAFTED LAWS PROTECTING SOME OF OUR NATION'S MOST THREATENED WILD AND SCENIC RIVERS. MY COMMITMENT OF THE ENVIRONMENT IS SECOND TO NONE.

I KNOW THAT SOME OF MY ENVIRONMENTAL FRIENDS OPPOSE THIS LEGISLATION AND FEEL THAT NO LAND SHOULD EVER BE EXCHANGED FROM THE NATIONAL PARK SERVICE. BUT IN THIS INSTANCE, I MUST DISAGREE.

ONE FACT REMAINS INDISPUTABLE IN THIS CASE. BEFORE THERE WAS A PARK ON THE RAVENSFORD TRACT, THAT LAND BELONGED TO THE SOVEREIGN CHEROKEE NATION. AND THOUSANDS OF CHEROKEE PEOPLE WERE FORCIBLY REMOVED FROM THIS LAND DURING THE INFAMOUS TRAIL OF TEARS, WHICH IN MY VIEW, IS ONE OF THE MOST SHAMEFUL ACTS IN OUR COUNTRY'S HISTORY.

MR. CHAIRMAN, I SUPPORT THIS LEGISLATION BECAUSE I BELIEVE IT WILL GIVE BACK TO THE TRIBE WHAT WAS TRADITIONALLY THEIRS AND UNITE THEIR RESERVATION WHICH HAS SIGNIFICANT CULTURAL AND HISTORIC MEANING TO THE CHEROKEE PEOPLE.

I HAVE SEEN PICTURES OF THIS LAND AND I AM CONVINCED THAT THIS LAND EXCHANGE WILL NOT ENDANGER THE INTEGRITY OF THIS PARK.

I UNDERSTAND THAT THE TRIBE HAS AGREED TO EXCHANGE SOME OTHER VALUABLE PROPERTY THAT WAS IDENTIFIED BY THE NATIONAL PARK SERVICE. THIS IS A REASONABLE APPROACH TO THIS ISSUE.

I LOOK FORWARD TO HEARING FROM THE WITNESSES TODAY AND MOVING FORWARD ON THIS LEGISLATION. THANK YOU.

The CHAIRMAN. Thank you.

I would now like to welcome our first panel. Panel one consists of Mr. Mike Olsen, Counselor to the Assistant Secretary for Indian Affairs of the Department of Interior. He is providing testimony on both bills today.

Please come up. Before you sit down, you forgot.

[Witness sworn.]

The CHAIRMAN. Let the record show he answered in the affirmative.

Michael, remember that under the Committee rules you must limit the oral testimony to 5 minutes, but the entire written statement will appear in the record.

STATEMENT OF MICHAEL OLSEN, COUNSELOR TO THE ASSISTANT SECRETARY OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ON H.R. 1409

Mr. OLSEN. OK. Thank you. If you can hear me OK?

The CHAIRMAN. Go ahead.

Mr. OLSEN. OK. I appreciate the opportunity to present the views of the Department of the Interior on H.R. 1409. Is that OK that we start there? OK. My name is Mike Olsen. I am a Counselor to the Assistant Secretary for Indian Affairs. It is nice to be back with the Committee, even if it on the other side of this table all by myself.

The Eastern Band of Cherokee Indian Reservation is located in western North Carolina and is home to 12,500 enrolled members. The reservation is adjacent to both the Great Smoky Mountains National Park and the Blue Ridge Parkway, which are both under the jurisdiction of the National Park Service.

H.R. 1409 would direct the Secretary of the Interior to exchange with the Eastern Band of Cherokee Indians approximately 143 acres of the Great Smoky Mountains National Park for 218 acres of tribal land. Just to clarify, the 143-acre tract is referred to as the Ravensford tract; the 218 acres that the tribe would be giving up is referred to as the Yellow Face tract. The Ravensford tract would be held in trust by the United States for the benefit of the tribe, and the Yellow Face tract would be added to the parkway.

The Department has no objection to action by Congress on this legislation. We are, however, moving forward with an administrative process for evaluation of the environmental effects of the proposed exchange and alternatives.

In the report that accompanied the Department of the Interior and Related Agencies Appropriations Act of 2001, the House Committee on Appropriations expressed support for a land exchange between the tribe and the Park Service so the tribe could obtain land suitable for a new school complex. The Committee urged the cooperation of the Park Service to ensure the exchange with the tribe takes place expeditiously. The Park Service held a series of initial scoping meetings in early 2002. The compilation of the public comments, evaluations, and appraisals are contained in a Draft Environmental Impact Statement, which was available for public review starting on June 13th and extending through August 15th. And the Department will update the Committee on the issues raised in this public review.

The tribe has been seeking flat land on which to build a new school for over 20 years. The tribe plans to use a portion of the Ravensford tract for the construction of an educational campus. The bill's findings point out that over 40 years ago, the Department of the Interior built the existing Cherokee Elementary School which has a capacity of 480 students. The school now hosts 794 students in dilapidated buildings and mobile classrooms at a dangerous highway intersection in downtown Cherokee, North Carolina.

Under the legislation, the Park Service and the tribe would enter into consultations to develop mutually agreed upon standards for size, impact, and design of the educational facilities in order to minimize or mitigate any adverse impacts on natural or cultural resources. The Park Service would also be authorized to enter into cooperative agreements to provide training, management, and protection of the natural and cultural resources on the tract. The development of the tract would be restricted to a road and utility corridor, and an educational campus and support infrastructure.

The legislation simply authorizes a land exchange for a site for a school. The tribe will still have to go through the process necessary for using BIA funds under the school cost share demonstration project or replacement priority. In addition, while the Park Service will mutually agree on the standards for size, impact, and design, the tribe will still have to follow BIA requirements with regard to design and planning.

The Ravensford tract is rich in biodiversity and in historical artifacts and Cherokee history. The tribe's Historic Preservation Office, in consultation with the Park Service, the State Historic Preservation Office, and an independent expert review panel, has developed

a cultural resource mitigation plan to ensure the preservation of these properties.

Finally, the land exchange contemplated in H.R. 1409 presents an extremely unique situation. The Department does not typically support land exchanges that establish restrictions, such as those contained in Section 4 of the legislation, on tribal trust land. We understand, however, that there was mutual agreement between the tribe and the bill's sponsor to include these provisions in the bill in order to ensure the least amount of impact on the adjoining park property.

This concludes my testimony, and I would certainly be happy to answer questions that you may have.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Counselor to the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, on H.R. 1409

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1409, a bill to provide for a Federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians.

The Eastern Band of Cherokee Indian Reservation is located in western North Carolina and is home to 12,500 enrolled members. The Reservation is adjacent to both the Great Smoky Mountains National Park (Park) and Blue Ridge Parkway (Parkway), which are under the jurisdiction of the National Park Service (NPS). Congress established the Great Smoky Mountains National Park on June 15, 1934. President Franklin Delano Roosevelt officially dedicated the Park on September 2, 1940.

H.R. 1409 would direct the Secretary of the Interior to exchange approximately 143 acres of the Park and Parkway, known as the Ravensford tract, to the Eastern Band of Cherokee Indians (Tribe) for approximately 218 acres of land, known as the Yellow Face tract, to the NPS. The Ravensford tract would be held in trust by the United States for the benefit of the Tribe and the Yellow Face tract would be added to the Parkway.

We have no objection to action by Congress in this matter. On the administrative front, we are moving forward with a process for evaluation of the environmental effects of the proposed exchange and alternatives. House Report 106-646, which accompanied the Department of the Interior and Related Agencies Appropriations Act of 2001 (P.L. 106-291), the House Committee on Appropriations expressed its support of the Tribe's efforts to enter into a land exchange with the NPS for purposes of obtaining land suitable for building a new school complex. The Committee urged "the cooperation of the NPS to ensure the exchange with the Tribe takes place expeditiously." In response, in January 2000 the NPS committed to begin this process and on June 14, 2000, a general agreement was executed between the NPS and the Tribe to identify the resource evaluations and appraisals required to be carried out by law. The NPS held initial scoping meetings in Knoxville (TN), Asheville (NC), and Cherokee (NC) in early 2002. The compilation of the public comments, evaluations and appraisals are contained in a Draft Environmental Impact Statement, which is available for public review from June 13th through August 15th. The Department will update the Committee on the issues raised in this public review.

The Tribe plans to use a portion of the Ravensford tract for the construction of an educational campus, which would replace existing schools that were constructed 40 years ago. The Tribe has been seeking flat land on which to build a new school for over 20 years. The bill's findings point out that the current Cherokee Elementary School was built by the Department of the Interior over 40 years ago with a capacity of 480 students, but now hosts 794 students in dilapidated buildings and mobile classrooms at a dangerous highway intersection in downtown Cherokee, North Carolina.

Under the legislation, the NPS and Tribe would enter into consultations to review the planned construction allowing the NPS and Tribe to develop mutually agreed upon standards for size, impact, and design of construction of the educational facilities in order to minimize or mitigate any adverse impacts on natural or cultural resources. The NPS would also be authorized to enter into cooperative agreements to provide training, management, protection, preservation, and interpretation of the natural and cultural resources on the tract. The development of the tract would be

restricted to road and utility corridor, and an educational campus and support infrastructure. No new structures would be constructed on the portion of the tract north of the point where the Big Cove Road crosses the Raven Fork River.

The legislation simply authorizes a land exchange for a site for a school. The Tribe will still have to go through the process necessary for using BIA funds under the school cost share demonstration project or replacement priority. In addition, while the NPS will mutually agree on the standards for size, impact and design, the Tribe will still have to follow BIA requirements with regard to design and planning.

During the 2002 National Tribal Historic Preservation Officers meeting, the Bureau of Indian Affairs (BIA) was given a tour of the lands proposed in this exchange. The Ravensford Tract is rich in biodiversity and in historical artifacts and Cherokee history. There is evidence that this property has more intact archeological properties that are historically significant to the Cherokee than any place other than a place known as Katoohah, which is considered the birthplace of the Cherokee. The Tribe's Historic Preservation Office in consultation with the NPS, the State Historic Preservation Office, and an independent expert peer review panel has developed a cultural resource mitigation plan to ensure the preservation of these properties.

The land exchange contemplated in H.R. 1409 presents an extremely unique situation. The Department does not typically support land exchanges that establish restrictions, such as the ones contained in section 4, on tribal trust land. We understand, however, there was mutual agreement between the tribe and the sponsor to include these provisions in the bill in order to ensure the least amount of impact on the adjoining park property. This concludes my testimony. I would be happy to answer any questions that you may have.

The CHAIRMAN. Mr. Olsen, you may as well do the testimony on both bills.

Mr. OLSEN. OK.

The CHAIRMAN. And we will open it up for questions at that point.

STATEMENT OF MICHAEL OLSEN, COUNSELOR TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ON H.R. 884

Mr. OLSEN. Very good. H.R. 884, the Western Shoshone Claims Distribution Act.

Taking a step back, the Western Shoshone judgment funds that are discussed, contemplated in this legislation originated with two claims filed in 1951 by the Te-Moak Bands of Western Shoshone in the Indian Claims Commission. One is an aboriginal land claim that was concluded in 1979 for \$26.1 million. The other is an accounting claim that resulted in two awards. The first was for approximately \$823,000, which Congress appropriated in 1992, and the second award was for \$29,000, which was appropriated in 1995.

Section 2 of H.R. 884 proposes to distribute the Western Shoshone land claim funds 100 percent per capita to approximately 6,500 individuals who have at least one-quarter degree of Western Shoshone blood. The balance of this fund, including interest, as of June 11, 2003, is \$142,472,644.

Section 3 of the legislation proposes to use the principal portion of the Western Shoshone accounting claims funds for a non-expendable trust fund. The interest and investment income will be available for educational grants and other forms of educational assistance to individual Western Shoshone members that are enrolled under Section 2 of the legislation and to their lineal descendants. The principal fund totals \$754,136. The interest fund, as of June 11, 2003, totals \$632,582.

Since 1980, numerous attempts have been made to reach agreement on the disposition of the Western Shoshone judgment funds. Moreover, a large segment of the Western Shoshone people have indicated that they support the judgment fund distribution. However, the tribal councils of the four successor Western Shoshone tribes, which are the Te-Moak, Ely, Duckwater, and Yomba, have mostly opposed the distribution of the judgment funds because they wanted Western Shoshone aboriginal lands returned.

Now, although the tribal governments were unanimous in their opposition in the early 1990's, since 1997 three of the four tribal councils have modified their position to support the distribution of the judgment funds.

The Te-Moak Tribal Council enacted a resolution on March 6, 1997, adopting a plan for the distribution of the funds and asked the Department of the Interior to support that plan. The next tribal council rescinded that resolution in the summer of 2000, but the current tribal council rescinded that action in January of 2002 and reinstated the 1997 resolution supporting distribution.

The Duckwater Shoshone Tribal Council enacted a resolution on March 18, 1998, supporting the Western Shoshone claims distribution proposal. On March 10, 1999, the council reaffirmed the earlier resolution supporting the distribution proposal, and within the last month of 2003, it enacted another resolution reconfirming its support of the proposal.

The Ely Tribal Council enacted a resolution on October 9, 2001, supporting the bills of the 107th Congress dealing with this issue. It, too, has enacted another resolution reconfirming its previous support.

We have been advised that the Yomba Tribal Council continues to oppose the distribution. However, Duck Valley, Fallon, and Fort McDermitt, three tribes with enrolled members that would be eligible to share in the distribution, in the judgment fund distribution under this legislation, have also enacted resolutions supporting the distribution.

We testified during the 107th Congress before the Senate Committee on Indian Affairs that the Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support by resolution dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the legislative language and have taken no action to rescind the resolutions.

The Department supports the enactment of H.R. 884 because we believe that it reflects the wishes of the vast majority of the Western Shoshone people. We are also pleased that three of the four successor tribes have expressed their support of the distribution as well as two other tribes with a significant number of tribal members of Western Shoshone descent.

We understand that many of the beneficiaries continue to believe in their rights under the Treaty of Ruby Valley. Subsection (2)(9) of the legislation acts as a savings clause for whatever rights remain in effect.

This concludes my prepared statement. We are submitting a report to be included in the record that gives more of a detailed history of the Western Shoshone claims, and I will be happy to answer any of your questions.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Counselor to the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, on H.R. 884

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of the Interior on H.R. 884, a bill entitled "The Western Shoshone Claims Distribution Act."

The distribution of the Western Shoshone judgment funds is a long-standing issue that needs to be settled. The judgment funds stem from two claims that were filed by the Te-Moak Bands of Western Shoshone in the Indian Claims Commission in 1951. One is an aboriginal land claim that was concluded in 1979 in Docket 326-K for \$26.1 million. The other is an accounting claim. Several issues in the accounting claim were handled separately and resulted in two awards. The first award in the accounting claim was for approximately \$823,000, and Congress appropriated funds to pay the claim in 1992. The second award was for \$29,000, and funds were appropriated in 1995 to pay the claim. The accounting claims were in Dockets 326-A-1 and 326-A-3.

Since 1980, numerous attempts have been made to reach agreement on the disposition of the Western Shoshone judgment funds. The most recent attempt began in March 1998, the Western Shoshone Steering Committee (WSSC), which is composed of individuals that are tribal members at various reservations in Nevada. With the approval of the Te-Moak Tribal Council, the WSSC has worked over the past four years investigating if the Western Shoshone people were in favor of a judgment fund distribution.

Since 1980, when the BIA held its first Hearing of Record on the distribution of the land claims judgment funds, a large segment of the Western Shoshone people have indicated that they are in favor of the judgment fund distribution. In the meantime, it's important to note that the tribal councils of the four successor Western Shoshone tribes (Te-Moak, Ely, Duckwater and Yomba) have mostly opposed the distribution of the judgment funds because they wanted the Western Shoshone aboriginal lands returned. Although the tribal governments were unanimous in their opposition in the early 1990's, since 1997, three of the four tribal councils have modified their position to support the distribution of the judgment funds.

The Te-Moak Tribal Council enacted Resolution No. 97-TM-10 on March 6, 1997, adopting a plan for the distribution of these funds and requested the Department to support it. That resolution was rescinded by the next tribal council in the summer of 2000, but the current tribal council rescinded that action in January of 2002 and reinstated the 1997 resolution, supporting distribution. It too, has not been rescinded. The Duckwater Shoshone Tribal Council enacted Resolution No. 98-D-12 on March 18, 1998, supporting the Western Shoshone claims distribution proposal. On March 10, 1999, they enacted Resolution No. 99-D-07 reaffirming the earlier resolution supporting the Western Shoshone Claims distribution proposal and within the last month of 2003, they enacted another resolution reconfirming their support of the proposal. The Ely Tribal Council enacted Resolution No. 2001-EST-44 on October 9, 2001, supporting the bills of the 107th Congress. They, too, have enacted another resolution that reconfirms their previous support. We have been advised that the Yomba Tribal Council continues to oppose the distribution. Several other tribes with enrolled tribal members that would be eligible to share in the judgment fund distribution under H.R. 884 have also enacted resolutions supporting the distribution. Those tribes are Duck Valley, Fallon and Fort McDermitt. We testified during the 107th Congress before the Senate Committee on Indian Affairs that the Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support by Resolution No. 2002-SPR-012, dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the legislative language and have taken no action to rescind the resolutions.

We support the enactment of H.R. 884 because we believe that it reflects the wishes of the vast majority of the Western Shoshone people. We are also pleased that three of the four successor tribes have expressed their support of the distribution, as well as two other tribes with a significant number of tribal members of Western Shoshone descent.

Section 2 of H.R. 884 proposes to distribute the Western Shoshone land claims funds that were awarded in Docket 326-K, one hundred percent (100%) per capita to approximately 6,500 individuals who have at least one-quarter (1/4) degree of Western Shoshone Blood. The current balance of this fund, including interest, as of June 11, 2003 is \$142,472,644. This section appears to be in accord with the wishes of the Western Shoshone people.

Section 3 proposes to use the principal portion of the Western Shoshone accounting claims funds awarded in Dockets 326-A-1 and 326-A-3 for a non-expendable Trust Fund. The interest and investment income will be available for educational grants and other forms of educational assistance to individual Western Shoshone members that are enrolled under Section 2 of this Act, and to their lineal descendants. The principal fund totals \$754,136. The interest fund, as of June 11, 2003 totals \$632,582. This section appears to be in accord with the wishes of the Western Shoshone people.

We understand that many of the beneficiaries of this treaty continue to believe in their rights under the Treaty of Ruby Valley and this subsection acts as a savings clause for whatever rights remain in effect. We are concerned that some tribes or individuals may believe that Article 5 of the Treaty (land provisions) remains in effect. To be safe, the clause should read, "Receipt of a share of the funds under this subsection shall not alter any treaty rights, or the final decisions of the Federal Courts regarding those rights, pursuant to the '1863 Treaty of Ruby Valley,' inclusive..."

This concludes my prepared statement. We are submitting a report to be included into the record that gives a detailed history of the Western Shoshone claims. I will be happy to answer any questions the Committee may have.

Western Shoshone Claims - Background Information

In 1935, the Western Shoshone started pursuing their claims against the United States by seeking legislation (S. 2510 - 74th Congress, 1st Session) to grant jurisdiction to the Court of Claims to hear the Western Shoshone claims arising under the Treaty of October 1, 1863, 18 Stat. 689 (1863 Treaty of Ruby Valley). This bill, and several others that were introduced in Congress between 1935 and 1946, did not result in legislation. The last bill, S. 2278, was introduced on May 31, 1946. The primary reason Congress did not enact this legislation was because it deferred action on all special jurisdictional bills for individual tribes so that it could pass legislation to create an Indian Claims Commission (ICC) with the authority to consider the claims of all Indian tribes. The ICC was created under the Act of August 13, 1946, 60 Stat. 1049.

The Shoshone claims in Docket 326 were filed before the ICC on August 10, 1951. Docket 326 included multiple claims involving the Eastern Bands of Shoshone, the Northwestern Bands of Shoshone, the Western Shoshone, the Shoshone-Goship Bands, and the mixed Bands of Bannock and Shoshone Indians. The ICC closed Docket 326 in 1967 when it severed all of the claims into separate Dockets numbering from 326-A through 326-K. The Western Shoshone land claims were transferred to Docket 326-K and their accounting claims were transferred to Docket 326-A. 40 Ind. Cl. Comm. 318, 453

On August 15, 1977, the ICC granted a final award of \$26,145,189.89 in Docket 326-K to the Western Shoshone Identifiable Group as represented by the Temoak Bands of Western Shoshone Indians, Nevada. See 219 Ct. Cl. 346 (1979) *Crt. Denied* 444 U.S. 973 (1979) *Litigation* and other actions initiated by some Western Shoshone entities, including the Te-Moak Bands (aka Temoak) delayed until December 19, 1979, the appropriation of funds to satisfy the award.

The ICC concluded that the Western Shoshone Identifiable Group aboriginally exclusively used and occupied a large tract of land located principally in Nevada with a small portion extending into California. The tract formed roughly a wedge from near the northeast corner of Nevada extending south, southwest, with the point of the wedge in California, including Death Valley.

The ICC found that the Western Shoshone California lands were acquired by the United States by statute on March 3, 1853, and that Indian title to the Nevada lands was extinguished gradually by the United States which treated the tract as public lands. On February 11, 1966, the ICC approved a joint stipulation between the United States and the Western Shoshone plaintiff that established July 1, 1872, as the aggregate valuation date for the encroachment upon and taking of the Nevada lands.

Prior to the agreement of the Nevada evaluation date the ICC had established that the Nevada tract consisted of 22,211,753 acres and the California tract consisted of 2,184,650 acres. On October 11, 1972, the ICC awarded in an Interlocutory Order \$21,350,000 for the Nevada land, \$200,000 for the California land, and \$4,604,600 for the removal of minerals from the Nevada tract prior to the 1872 taking date. The ICC deducted \$9,410.11 as payment on the claim, but nothing for offsets, resulting in the 1977 award of \$26,145,189.89. See 29 Ind. Cl. Comm. 5.

Pertinent Aspects Concerning the Western Shoshone Land Claims

Controversy surrounds any discussion concerning the Western Shoshone land claims and the distribution of the judgment funds awarded in Docket 326-K. The disputed issues include the size and location of the claimed land area, whether the 1863 Treaty of Ruby Valley grants the Western Shoshone recognized title to the lands described in the 1863 Treaty of Ruby Valley, and effect the distribution of the judgment funds will have on the remaining claims of the Western Shoshone and on individual Western Shoshone people.

The issue concerning the size and location of the claimed land area first surfaced in 1935 when the Department of the Interior issued a report on S. 2510, dated June 12, 1935, and stated that the Duck Valley Indian Reservation was within the country described in the treaty and that the contention of the Indians to the contrary was not supported by Royce's Indian Land Cessions (Eighteenth Annual Report of the Bureau of American Ethnology). In a later report on S. 23 (Senate Report No. 79, dated March 5, 1943), the Department of the Interior acknowledged that its earlier statement concerning the Duck Valley Reservation was erroneous. The report further states that:

In recent years, there has been discovered a map that was prepared by James Duane Doty, one of the Commissioners who negotiated the treaties with the Western and four other bands of Shoshone Indians in 1863. The map accompanied the treaties concluded by Commissioner Doty with these Indians and roughly depicted the boundaries of the lands claimed by them as described in the separate treaties. An examination of the map discloses that the Duck Valley Reservation is not within the country described in the treaty with the Western Shoshones, but, as contended by them for many years, is situated a considerable number of miles north of their country. Further support is given to the contention of the Indians by a map prepared by the General Land Office of this Department in May, 1939, showing the boundaries of the lands claimed by the various bands of Shoshone Indians in the treaties of 1863 and the acreage of such lands in each State. This map also shows that the Duck Valley Reservation is far north of the lands described in the Western Shoshone Treaty of 1863. The map shows in addition that the lands described in the Western Shoshone Treaty comprised approximately 15,811,000 acres situated entirely within the State of Nevada.

This same issue is discussed in ICC Finding of Fact No. 73 (40 Ind. Cl. Comm. 318, 400-403). The ICC found that:

- The locations of the boundaries of the Western Shoshone country, described by metes and bounds in Article V of the Treaty of Ruby Valley, are not free from doubt. The decision in the valuation proceeding herein noted that the territorial claim of the Western Shoshones, as described in the Treaty of Ruby Valley and depicted by Royce, Indian Land Cessions in the United States, supra, was larger than the area of the claim in Docket 326-K (29 Ind. Cl. Comm. 5, 47, note 5). The Western Shoshone lands are shown as Area 444 on Royce's maps of Nevada, California, Utah, Oregon, and Idaho. Royce Area 444 extends far north into Idaho, northwest into Oregon, east into Utah, and covers more Nevada land than is included in the Docket 326-K claim. According to Royce's maps and cession schedules, the Lemhi reserve, established by Executive Order of February 12, 1875 (for the Shoshoni, Bannocks, and Sheepeaters), the Carlin Farms reserve, established by Executive Order of May 10, 1877, and the Duck Valley reserve, established by Executive Order of April 16, 1877, were all located within the boundaries of the Western Shoshone country as described in the Treaty of Ruby Valley.
- Leaders of the Western Shoshones who lived near the area of the Duck Valley Reservation suggested that the Duck Valley land be set aside for all Western Shoshones, but the Temoak bands, who lived in the Ruby Valley area south of Duck Valley objected because the reservation was not within their country. The Temoak bands believed that the treaty promised them a reservation in Ruby Valley. This disagreement is consistent with the observations of Powell and Ingalls who reported in 1873 that each local group wanted a separate reservation in its particular aboriginal area.
- Royce relied on data and information of the Bureau of Indian Affairs and the General Land Office in preparing his material. (Royce, supra, p. 644.)
- The Royce maps, in an official publication of the United States (as is the 18th Annual Report of the Bureau of American Ethnology), show the Duck Valley Reservation as being within the lands described in Article V of the Treaty of Ruby Valley and within the aboriginal area of the Western Shoshones. These maps and the notes in the Land Cession Schedules . . . indicate that officers

of the United States believed in 1877 when the reservation was established that it was within the Western Shoshone aboriginal area. However, plaintiff's exhibit 72 in the offsets proceeding includes a report accompanying a letter of July 11, 1941, of the Department of the Interior to the Chairman of the Committee on Indian Affairs of the House of Representatives which states that according to maps available to the Department in 1941, the country of the Western Shoshones, as described in the Treaty of Ruby Valley, was much less extensive than that shown as Area 444 on the Royce maps, and that according to the then recently discovered maps, the Duck Valley Reservation was outside of the Western Shoshone aboriginal lands. In 1935, before the discovery of the maps referred to in the 1941 report, the Department of the Interior reported to Congress that the reservation was within the Western Shoshone aboriginal area.

- In sum, from about 1869 through 1877, the United States assisted some Western Shoshones in maintaining small farms and one or more reservations within the aboriginal areas, and in 1877, set aside the Duck Valley Reservation for all Western Shoshones. Between 1877 and 1941, the Department of the Interior records indicated that the reservation was within the plaintiff's aboriginal area, but since 1941 the matter has been open to doubt.

We are mentioning this issue because we note that the map used by the Western Shoshone National Council to show the claimed area is different than the maps used by the United States and the ICC in Docket 326-K. The Western Shoshone aboriginal land area was established in 1962 by the ICC, and it is much larger than the land area described in the 1863 Treaty of Ruby Valley. We have attached copies of the maps to this report. The first map is a portion of a larger map that was included with the Final Report of the Indian Claims Commission that was issued in 1978. The second map shows the boundaries of the Western Shoshone aboriginal land area and the 1863 Treaty area.

The second issue concerns whether the Western Shoshone have recognized title to the lands described in the 1863 Treaty of Ruby Valley. This issue was discussed by the United States Supreme Court in its decision in *Northwestern Bands of Shoshone Indians v. The United States*, 324 U.S. 335 (1945). The decision specifically pertains to the claims of the Northwestern Bands of Shoshone under the 1863 Box Elder Treaty, but it also discusses the five treaties entered into with the Shoshones, including the 1863 Ruby Valley Treaty. The following are excerpts from the Supreme Court decision:

On July 5, 1862, 12 Stat. 512, 529, Congress appropriated \$20,000 for defraying the expenses of negotiating a treaty with the Shoshones. The appropriation followed a letter from the Secretary of the Interior to the chairman of the House Committee on Indian Affairs expressing the view that the lands owned by the Indians of Utah were largely unfit for cultivation and that it was "not probable that any considerable portion of them will be required for settlement for many years." A special commission was promptly appointed and instructed that it was not expected that the proposed treaty would extinguish Indian title to the lands but only secure freedom from molestation for the routes of travel and "also a definite acknowledgment as well of the boundaries of the entire country they claim as of the limits within which they will confine themselves, which limits it is hardly necessary to state should be as remote from said routes as practicable."

As the distances made it impracticable to gather the Shoshone Nation into one council for treaty purposes, the commissioners made five treaties in an endeavor to clear up the difficulties in the Shoshone country. These are set out in full in the report below. 95 Ct. Cl. 642. Four will be found also in 13 Stat. 663, 681, and 18 Stat. 685, 689. . . *Northwestern Bands*, 324 U.S. 335, 341-342 (1935)

Later in the opinion the Court stated:

Without seeking any cession or relinquishment of claim from the Shoshone, except the Eastern Shoshone relinquishment of July 3, 1868, just referred to, the United States has treated the rest of the Shoshone territory as a part of the public domain. School lands were granted. . . National forests were freely created. . . The lands were opened to public settlement under the homestead laws. . . Thus we have administration of this territory by the United States proceeding as though no Indian land titles were involved.

The Court of Claims examined the evidence adduced before it and reached the conclusion as a finding of fact that the United States "did not intend that it [the treaty] should be a stipulation of recognition and acknowledgment of any exclusive use and occupancy right or title of the Indians, parties thereto . . . The treaty was intended to be, and was, a treaty of peace

and amity with stipulated annuities for the purposes of accomplishing those objects and achieving that end." . . . 324 U.S. 335, 346 (1945)

In its conclusion, the Supreme Court held that:

It seems to us clear that the circumstances leading up to and following the execution of the Box Elder Treaty that the parties did not intend to recognize or acknowledge by that treaty the Indian title to the lands in question. Whether the lands were in fact held by the Shoshones by Indian title from occupancy or otherwise or what rights flow to the Indians from such title is not involved. Since the rights if any the Shoshones have, did not arise under or grow out of the Box Elder treaty, no recovery may be had under the jurisdictional act. 324 U.S. 335, 354 (1945)

The Supreme Court decision caused an uproar. Congressman Karl E. Mundt of South Dakota was critical of the decision and his comments were included in the Extension of Remarks portion of the Congressional Record. Congressman Mundt's remarks, dated March 14, 1945, were included in the Appendix to the Congressional Record, 79th Congress, 1st Session, page A1185. Copies of Congressman Mundt's remarks and the Supreme Court decision are attached.

The controversy escalated in the 1970's when the Bureau of Land Management filed suit against Mary and Carrie Dann for trespass violations on public domain lands. Given a choice, some of the Western Shoshone would prefer to acquire additional trust lands within their aboriginal land areas rather than accept compensation for the loss of those lands.

In 1974 the United States filed a complaint against Mary and Carrie Dann alleging that they had trespassed on public lands by grazing their cattle there without a permit from the Bureau of Land Management. The government sought an injunction and damages. The Danns based their defense on the grounds that they were members of the Western Shoshone Tribe of Indians, and that the Western Shoshone held aboriginal title to the lands in question.

Meanwhile, the Western Shoshone Legal Defense and Education Association (Association) filed a petition before the ICC requesting it to suspend further action in the proceedings in Docket 326-K until the United States District Court for the Nevada District had decided the trespass action brought by the United States in the case of *United States v. Dann*, Civil No. R-74-60, BRT, (D. Nev.). The Association also petitioned for leave to file an amended claim in Docket 326-K. The Association asserted that Indian title to the greater portion of the aboriginal lands of the Western Shoshone had not been extinguished. It also asserted that an award of damages in Docket 326-K would extinguish the Western Shoshone claim to lands.

In the Dann case, the government argued that any title that the Western Shoshone ever had to the land in question had been extinguished, and that this fact had been conclusively established in proceedings brought before the ICC on behalf of the Western Shoshone.

In 1975, the District Court accepted the government's arguments in the Dann case and granted summary judgment against the Danns.

On February 20, 1975, the ICC denied the petition to stay the proceeding and for leave to present an amended claim. In 1976 and 1977, the Te-Moak Bands of Western Shoshone filed several motions before the ICC to stay the proceedings in Docket 326-K. The motions were denied by the ICC on August 15, 1977. The claims in Docket 326-K were transferred to the United States Claims Court (Claims Court) prior to the termination of the ICC on September 30, 1978. On December 6, 1979, the Claims Court certified the award of \$26,145,189.89 and the funds were appropriated under 31 U.S.C. 1304.

On March 11, 1980, the BIA issued its first results of research report in Docket 326-K. The report described the difficulties in identifying the beneficiary. The Western Shoshone entities were described as being extremely scattered. The report found that "It is not possible to describe the Western Shoshone in terms of forming a tribe or a group of organized tribes, particularly in view of the Shoshone-Paiute combined organizations and the very real possibility that many Western Shoshone descendants (including those who strongly identify as Shoshone people) are not and never have been associated with any reservation entity." On that basis, the report identified those Western Shoshone people, and their descendants, who derive from the census and other rolls of twelve identified Shoshone and Shoshone-Paiute entities, and other descendants who prove Western Shoshone ancestry on the basis of rolls and records to the satisfaction of the Secretary of the Interior, to be the beneficiaries of the award in Docket 326-K.

The Bureau of Indian Affairs (BIA) held a hearing of record on July 26, 1980, in Elko, Nevada. Approximately 425 people attended the meeting to hear about the proposed plan for the use and distribution of the funds awarded in the Docket 326-K funds. Those in attendance were given the opportunity to testify at the hearing.

A three-minute time limitation for testimony was established because a large number of those present wished to testify. The meeting was dominated by those opposed to the judgment fund plan. Many of those in favor of the plan felt intimidated and submitted written testimony with the request that it not be read publicly. At the conclusion of the meeting it appeared that the majority were opposed to the plan and wanted the funds invested until the Dann litigation was settled. Once the written comments were tallied it showed a different sentiment. The results of the written and oral comments were 75 against the fund distribution and 194 for the distribution of the funds with most asking for 100 percent per capita to individuals with at least 1/4 degree Western Shoshone Indian blood.

The BIA issued an amended Results of Research Report on January 22, 1982, for Docket 326-K. The report was amended to bring it in line with the BIA's "overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds." In that report, four tribes were designated as the tribal successors to the Western Shoshone entity of the period of 1853 to 1872. Those tribes are 1) Te-Moak, 2) Duckwater, 3) Yomba, and 4) Ely. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity who otherwise meet the criteria detailed in the March 11, 1980 Results of Research Report.

On May 19, 1983, the Ninth Circuit Court of Appeals ruled in favor of the Danns. The Ninth Circuit held that the lower court was correct in concluding that the Western Shoshone title was not extinguished as a matter of law by application or administration of the public land laws, but reversed the lower court's holding that the Danns were barred by *res judicata* or collateral estoppel from asserting aboriginal title as a defense to the claim of trespass. This ruling was reversed by the United States Supreme Court on February 20, 1985. The Supreme Court held that "To hold, as the court below has, that payment does not occur until after the final plan of distribution has been approved by Congress would frustrate the purpose of finality . . . while subjecting the United States to continued liability for claims and demands that 'touch' the matter previously litigated and resolved by the Indian Claims Commission."

Since 1983 the Department of the Interior has been meeting with Western Shoshone organizations for the purpose of negotiating a legislative settlement to the land claims issue. In 1985, the Western Shoshone National Council received a grant from the Administration for Native Americans so that they could develop an inventory and historical analysis of the Western Shoshone aboriginal lands and other natural resources subject to the 1863 Treaty of Ruby Valley. Meetings were held in 1985 and 1986 with the Western Shoshone leadership for the purpose of developing a plan for the distribution of the judgment funds, and to identify lands that could be transferred to the Western Shoshone tribes to increase the reservation land base. Nothing was accomplished due to the dynamics of tribal politics and power struggles within the leadership.

A legislative proposal was drafted by an attorney representing the organization called the "Western Shoshone Distribution Association." The legislative proposal was used as the basis for H.R. 3384 that was introduced on September 28, 1989. This bill provided for the establishment of a Western Shoshone roll and the apportionment and distribution of the funds. A hearing was held on April 26, 1990, but no action was taken because the tribal governments, the Western Shoshone National Council, and the Administration opposed the bill. An attempt was made to revise the bill to address Interior's concerns but the Chairman of the Committee on Interior and Insular Affairs advised the Department in September 1990 that the bill would not be scheduled for full Committee consideration because all of the tribal governments adamantly opposed the bill and wished to begin negotiations with BIA to develop a plan to distribute the funds.

In November 1990, legislation was drafted regarding the use of rangeland resources in Nevada, but never introduced. In January 1991, the Duckwater Shoshone Tribe drafted proposed legislation concerning the Tribe's asserted claim to the lands of the Western Shoshone nation. This proposal was never introduced. Another legislative proposal was drafted by the attorney for the Western Shoshone Distribution Association. It was used as the basis for H.R. 3897, which was introduced on November 22, 1991. Although a hearing was scheduled for April 30, 1992, it was never held and this caused the bill to die without action.

On January 22, 1994, the Western Shoshone leaders met with the Secretary of the Interior in Denver, Colorado. As a result of that meeting, efforts were made to establish another Federal/Tribal negotiation team. Efforts were made to provide the members of the successor Tribes of the Western Shoshone with an inventory of public lands that were available for transfer to the tribes. The Bureau of Land Manage-

ment continues to meet with some of the tribal governments, but to date no tangible results have been achieved.

Docket 326-A-1 and A-3

The claims in Docket 326-A-1 called for an accounting of two funds. The first was the \$100,000 annuity to be paid to the Western Shoshone Indians under Article VII of the 1863 Treaty of Ruby Valley. In the Opinion of the ICC, dated April 29, 1970, 23 Ind. Cl. Comm. 74, the ICC found that the Government had not paid \$16,392.76 of the Treaty funds to the Western Shoshone. The ICC also found that the Government improperly disbursed \$9,930.74 of the Treaty funds. Those two amounts total \$26,323.50, which could have potentially been awarded to the Western Shoshone. The subsequent ICC and Claims Court decisions never discussed the Treaty accounting claims again. It was inadvertently omitted from the award.

The second fund was the Indian Monies Proceeds of Labor (IMPL) fund for the Western Shoshone Indians. The time-period of the accounting spanned from 1886 to 1951. The plaintiff asked the government to allocate the funds in the IMPL account between the various Western Shoshone Reservations. The government said that it could not allocate the funds because the records did not have sufficient information to allow such an allocation. The reports do show that the bulk of the funds were collected from the Duck Valley Reservation between 1919 and the mid to late 1930's.

On December 3, 1991, the United States Claims Court entered a final judgment of \$823,752.64, in Docket 326-A-1, on behalf of the Te-Moak Bands of Western Shoshone Indians of Nevada, suing on behalf of the Western Shoshone Nation of Indians. On June 16, 1995, in Docket 326-A-3, the Court of Federal Claims awarded \$29,396.60 in interest on the award previously entered in Docket 326-A-1. The funds to satisfy these awards were appropriated under 31 U.S.C. § 1304 on March 23, 1992, and August 21, 1995, respectively.

In 1992, the BIA issued a Results of Research Report that erroneously identified the Te-Moak Band of Western Shoshone as the sole beneficiary of the funds awarded in Dockets 326-A-1 and A-3. On April 29, 1997, the report was withdrawn.

The BIA extended invitations to the Tribal leaders at Duck Valley¹, Duckwater, Ely, Yomba, Te-Moak, and the Death Valley Timbi-Sha Shoshone Band of California asking them to attend a meeting scheduled for May 22, 1997, at Elko, Nevada, to discuss the disposition of the funds. The Chairperson from Ely informed the BIA that she would not be able to attend. The attorney representing the Timbi-Sha Shoshone informed us that they would not attend because they did not believe they had an interest in the judgment fund. No acknowledgment or response was received from the Chairman at Yomba. Representatives from Te-Moak, Duckwater and Duck Valley attended, as well as the Shoshone representatives from the Fallon Reservation². During the meeting we asked the tribal representatives to make recommendations on how the funds could be divided. They were advised that the record did not contain sufficient information for the government to allocate the funds between the reservations. The tribal representatives arrived at recommendations on how the funds could best be expended for the benefit of the Western Shoshone people by establishing a perpetual fund utilizing the interest to fund scholarship grants. This recommendation is contained in the legislative proposal.

MEMBERS OF THE WESTERN SHOSHONE CLAIMS STEERING COMMITTEE,

Te-Moak Tribe:

1. WSSC Co-Chair Leta Jim, Vice-Chairperson, Te-Moak Tribal Council Member, and Elko Band Council Member
2. WSSC Co-Chair Larry Piffero, Te-Moak Tribal Council Member, and Elko Band Council Member
3. Wilbur Woods, Chairman, Elko Band Council

¹The Business Council of the Shoshone-Paiute Tribes of the Duck Valley Reservation (Business Council) enacted Resolution No. 97-SPR-63 dated February 11, 1997. The resolution granted recognition to the organization of Western Shoshone descendants called the "Western Shoshone of Duck Valley Reservation" for the purpose of handling all matters relating to the Western Shoshone claims until negotiations are finalized. The Business Council withdrew its recognition of the Western Shoshone organization and rescinded Resolution No. 97-SPR-63 four years later by Resolution No. 2002-SPR-012 dated November 13, 2001. The second resolution was enacted six months after S. 958 was introduced in Congress.

²The Business Council of the Fallon Paiute-Shoshone Tribes enacted Resolution No. 97-F015, dated February 11, 1997, and amended it with Resolution No. 97-F-063, dated May 27, 1997. The resolution granted official recognition of the Fallon Shoshone Claims Committee to represent, negotiate, and make decisions on behalf of the Fallon Band of Western Shoshone in all matters relating to the claims issue.

4. Grace Begay, Wells Band Council Member
 5. Lydia Sam, Chairperson, Battle Mountain Band
 6. Larson Bill, Tribal Representative, South Fork Band Council
- Duckwater Tribe:
7. Henry Blackeye, Jr., Chairman, Duckwater Tribal Council
 8. Tim Thompson, Vice-Chairman, Duckwater Tribal Council
 9. Henry Blackeye, Sr., Secretary, Duckwater Tribal Council
 10. Jerry Millett, Member, Duckwater Tribal Council
 11. Douglas George, Sr., Member, Duckwater Tribal Council
- Ely Area: None
- Yomba Area:
12. Glen Hooper, Tribal Representative, Yomba Area
- Owyhee Area:
13. Iliane Premo, Chairperson, Western Shoshone Council at the Duck Valley Reservation
 14. Mildred Scissions, Member, Western Shoshone Council at the Duck Valley Reservation
 15. David Jones, Member, Western Shoshone Council at the Duck Valley Reservation
- Fallon Area:
16. Nancy Stewart, Co-Chairperson, Fallon Shoshone Claims Committee
 17. Ermert Nihoa, Co-Chairman, Fallon Shoshone Claims Committee
 18. Iola Byers, Member, Fallon Shoshone Claims Committee
 19. Betty Robison, Interpreter for the Fallon Shoshone Claims Committee
 20. Nevada Iverson, Member, Fallon Shoshone Claims Committee
 21. Kathy Bowen-Curley, Member, Fallon Shoshone Claims Committee
 22. Steven Amick, Member, Fallon Shoshone Claims Committee
 23. Francine Tohannie, Secretary for the Fallon Shoshone Claims Committee
 24. Ernest Hooper, Interpreter for the Fallon Shoshone Claims Committee
 25. Nila Shanley, Member, Fallon Shoshone Claims Committee
 26. Winford Graham, Member, Fallon Shoshone Claims Committee
 27. Wayne Ellison, Member, Fallon Shoshone Claims Committee
 28. Lynette Fisherman, Member, Fallon Shoshone Claims Committee
 29. Vana Roman, Member, Fallon Shoshone Claims Committee
 30. Cordelia Nordwall, Member, Fallon Shoshone Claims Committee
 31. Barbara Culbertson, Member, Fallon shoshone Claims Committee
- Fort Hall Area:
32. Everett Jim, Tribal Representative, Fort Hall Western Shoshone

Data Concerning the Western Shoshone Reservations and Tribal Enrollment

- Treaty of Ruby Valley entered into on October 1, 1863, with the Western Shoshone Indians.
- First Western Shoshone Reservation was established outside the aboriginal territory at Duck Valley by Executive Order dated April 16, 1877, for all Western Shoshone. Carlin Reserve Farm was established the same year, but it was later abolished.
- In 1885 Paddy Cap's Band of Paiute were sent to the Duck Valley Reservation. By Executive Order of May 4, 1886, approximately 69,000 acres were added to the Duck Valley Reservation for them and other such Indians as the Secretary of the Interior may see fit to settle thereon.
- In 1917, a reservation was established at Battle Mountain for homeless Shoshone.
- In 1918, 160 acres were reserved at Elko, Nevada for Shoshone and Paiute Indians living near Elko.
- The Act of June 27, 1930, authorized the purchase of 10 acres at Ely for the Shoshone already living there.
- The Act of June 18, 1934, authorized the purchase of lands for Yomba Shoshone. The Proclamation is dated October 27, 1938.
- Proclamation dated February 8, 1941, proclaimed a total of 9,548.46 acres within Elko County, Nevada to be an Indian Reservation for the use and benefit of the Te-Moak Bands of Western Shoshone.
- South Fork Indian Colony was established under the 1941 proclamation.
- Wells Colony was established under the Act of October 15, 1977.

WESTERN SHOSHONE INDIAN RESERVATIONS

	Tribal	Allotted	Government	Total Acres ¹	
Duckwater	3,814.52	0	0	3,814.52	*
Ely	111.25	0	0	111.25	
Wells	80.00	0	0	80.00	
Elko	160.00	0	32.80	192.80	
Battle Mountain	683.30	0	0	683.30	
South Fork	13,693.34	0	0	13,693.34	**
Odgers Ranch	1,987.04	0	0	1,987.04	***
Duck Valley (half each in Nevada & Idaho)	(NV) 144,274.30 (ID)145,545.00	0	0	289,819.30	
Yomba	4,718.49	0	0	4,718.49	****
Fallon	3,480.00	4,640.00	0	8,120.00	
Wildhorse Reservoir*****			3,981.68		

¹ Abstracted from Phoenix Area Office BIA Annual Acreage Report for December 31, 1997.

* About 340,000 acres of Public Domain lands are used for spring, summer and fall cattle grazing permit (Taylor Grazing Act) to the tribe from the Bureau of Land Management (BLM).

** About 32,000 acres of Public Domain (BLM) and 3,000 acres of Humboldt National Forest (United States Department of Agriculture (USDA), United States Forest Service (USFS)) are under Taylor Grazing Act permit to the tribe.

*** About 70,000 acres of Public Domain (BLM) is used in common with other permittees.

**** The tribe has permits for the use of Public Domain (BLM & USFS) Taylor Grazing Act lands. At this time the BIA does not have the number of acres on record.

***** The Wildhorse Reservoir was created by the Act of April 4, 1938, 52 Stat. 193. The Act set aside certain described lands which now aggregate 3,982 acres. These are Government-owned lands, not tribal trust lands, and are the reservoir site to store and regulate Indian irrigation waters delivered to the Duck Valley Reservation, which is roughly 15 miles downstream on the Owyhee River. The beneficiaries are the Indians residing upon the Nevada portion of the Duck Valley Indian Reservation.

Tribal Enrollment

Tribe	Tribal Enrollment	Western Shoshone Enrollment
Duckwater	318	318
Ely	288	288
Yomba	208	208
Te-Moak:		2,456
Battle Mountain	563	
Elko	1,445	
South Fork	258	
Wells	190	
Paiute-Shoshone Tribe of Fallon Reservation	987	598
Shoshone Paiute Tribe of Duck Valley Reservation	1,818	<u>400</u>
	Total Enrolled Western Shoshone:	5,062
	Non-enrolled Western Shoshone Descendants: *	<u>1,500</u>
	Estimated Total Members	6,562

* Represents the estimated number of potentially eligible Western Shoshone lineal descendants that are not enrolled with any tribe, or if enrolled, they are members of non-Shoshone or non-Shoshone-Paiute Tribes.

The CHAIRMAN. Thank you, Mr. Olsen. I just have a couple of questions for you.

On H.R. 1409, I have not had the opportunity to visit the site yet, but in the pictures that I have seen, it appears that the land that the tribe is trying to obtain has electrical lines going across it. It has had some development over the years that has occurred on that site even though there is not a lot there right now other than electrical lines and such. And the land that they would exchange appears to be pristine lands that have some value in terms of protection and adding to the park site.

Would it not make sense to you and the Department of Interior to have the pristine lands in the park and protected from development and to take the other lands that have had development and are crisscrossed with power lines, to use that as the school site?

Mr. OLSEN. Well, I think that the Park Service as a result of the exchange would be, as you say, receiving land that is in much more pristine condition than the land that the tribe would be acquiring, the Ravensford tract. And, in fact, it is also home of two endangered species that would be coming under National Park Service protection. Whereas, as you have pointed out, the land that the tribe would be obtaining is not in that pristine condition.

In addition, as was pointed out before, the tribe is giving up 218 acres versus the 143 that it would be acquiring. So the tribe is able to accomplish what it is aiming for through the legislation, but the Park Service as well comes out not in terrible shape.

The CHAIRMAN. Further, under the current rules that we operate under in terms of the relationship between Native Americans and the Federal Government, don't we have a responsibility to try to

help improve the conditions on the reservations and provide better facilities for education on those reservations?

Mr. OLSEN. Indeed we do. We have certainly a trust responsibility to the Eastern Band of Cherokee as we do to other tribes, and we certainly take that responsibility seriously. And, in fact, one of the goals of this administration is to improve the education and educational facilities that Indian students attend. In fact, President Bush has made it a priority to do that, and we feel very strongly about that.

The CHAIRMAN. I just wonder—and I know this may be—you may not be able to answer this question, but I wonder if we don't do this, if we don't make this exchange and provide this particular piece of property for them to build the school on, is the Park Service or someone else at Interior willing to step forward and provide a different piece of property that is suitable for them to build on?

Mr. OLSEN. I am not certain that I can answer that. I don't know that there is another suitable piece of property. I am accompanied by Randy Jones, who is the Deputy Director of the Park Service, who may be able to answer that question. My understand is that the tribe has gone to great lengths in the past to determine or to find or to come up with property that would be suitable for construction, ideally flat land, and has been unable to find any other property that would work.

The CHAIRMAN. That fits with what I have been told. I have had the opportunity to talk to both the chairman of the tribe and the staff, and this is apparently an issue that has been kicking around for a number of years. And from what I have been able to gather, there has not been another site which has been identified that would be acceptable not only to the tribe but to anybody else. And I just think that at this point in time, we have an obligation to move forward with this, and I appreciate your testimony here today because I do think this is something that is extremely important, so thank you.

At this time I would like to recognize Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Mike, I have always enjoyed working with you in your other capacity and look forward to working with you in your new responsibilities.

Mr. OLSEN. Thank you.

Mr. KILDEE. This legislation, 1409, specifically bans gaming on these lands. Has the tribe talked to the BIA about using these lands for anything other than a school?

Mr. OLSEN. Not that we are aware of. There has not been any discussion between the tribe and the Bureau regarding use other than for education.

Mr. KILDEE. And that is my understanding, too. I have been talking to the tribe for quite some time. I just wanted to make sure that was part of the record.

Would the BIA anticipate any problems taking this land into trust on behalf of the tribe? Would you anticipate any problems at all taking this land into trust?

Mr. OLSEN. Pursuant to the legislation?

Mr. KILDEE. Yes.

Mr. OLSEN. No. We feel that it is in the best interest of the tribe for this to go through, and, no, I do not believe so. I don't know if I am addressing your question, but this—

Mr. KILDEE. Yes, you are. This legislation, you support this legislation and this legislation would clear the way for you to accept this.

Mr. OLSEN. The Department does not objection to the legislation moving forward, and we feel that it is in the best interest of the tribe for the Congress to act on it.

Mr. KILDEE. How would you describe just briefly the basic condition of schools in Indian country?

Mr. OLSEN. Well, we certainly have an amount of work to do. There is approximately a \$600 million backlog in replacement construction, and like I said before, it is a priority of this administration to correct those problems. It is a priority of President Bush to do that.

We recognize that there is work to be done, and we are committed to doing that.

Mr. KILDEE. And this certainly dates back to many administrations. I can recall—I have been in Congress now 27 years. About 25 years ago, I began to travel to various schools, particularly in the Western part of the United States. After a while, I would get a call from a BIA principal saying, “Would you come and visit my school or just tell the BIA you are coming?” because a week ahead of time, they are, you know, fixing things up before we get there. So this condition certainly has gone through many administrations, and I think anything we can do to encourage construction of proper schools is a step in the right direction. I appreciate your position on that.

Let me ask another question. Could you explain to the Committee the process in H.R. 884 used to name the four tribes as the successor tribes for these Shoshone lands?

Mr. OLSEN. So that you know, I am accompanied also on this legislation as well by Daisy West, who is a Tribal Relations officer. And I am going to ask her to come up and answer that question for you.

Mr. KILDEE. I will repeat the question. Could you explain the process used to name the four tribes as the successor tribes?

Ms. WEST. Historical research was done by a historian back in the 1970's to identify the tribal groups that were at the time of taking, which at the time of taking was in, I think, 1870-something, 1872, I think. And then they traced the migration of those groups to where they are presently today. They identified that the majority of the Shoshone are with four present-day tribal governments: Te-Moak, Yomba, Ely, and Duckwater. And those tribal governments are composed primarily of Shoshone people, Western Shoshone people.

They also identified other groups, which I think goes to around 17 or so, that are mixed with Paiute and Shoshone. And the Western Shoshone that are with those groups would also be eligible to participate under this distribution.

Mr. KILDEE. Thank you. I am always interested in both genealogical and geographical studies that are made here, and I appreciate your response. Thank you very much.

The CHAIRMAN. The gentleman's time has expired. I would like to ask our witness, if you are going to answer any more questions, I am going to have to swear you in. But I would like you to state your name and your position for the record.

Ms. WEST. My name is Daisy West, and I am Tribal Relations officer with the Bureau of Indian Affairs in the Office of Tribal Services.

The CHAIRMAN. There may be other questions for you, and the gentleman from the Park Service, if you could just come up, and both of you, I am just going to swear you in right now. That way if there are any questions for you, I do not have to stop.

[Witnesses sworn.]

The CHAIRMAN. Let the record show that both answered in the affirmative. Thank you.

Mr. Gibbons?

Mr. GIBBONS. Thank you very much, Mr. Chairman. I would like to welcome our guests here today as well on these two very important bills. I am fully in support of H.R. 1409 and its effects on the Cherokee Tribe. I also would like to ask a question to focus on Mr. Olsen with regard to 884.

Mr. Olsen, what is the current status of the Indian Claims Commission?

Mr. OLSEN. My understanding is the Indian Claims Commission no longer exists. In fact, in the legislation forming the Commission, there was a provision that said after a certain period of time, the Commission would go away.

Mr. GIBBONS. Do you know the date that the Commission dissolved?

Mr. OLSEN. I don't know the exact date. September 1978, I am being told.

Mr. GIBBONS. OK.

Mr. OLSEN. But we can certainly check on that and make sure we get you the accurate answer.

Mr. GIBBONS. OK. So any requirement of a defunct or dissolved commission to perform an act would be very difficult, at best, since the Commission no longer exists. Is that correct?

Mr. OLSEN. Right.

Mr. GIBBONS. One of the requirements under the finality of the Supreme Court decision was a report that was due from the Indian Claims Commission. If the Indian Claims Commission is no longer in existence and has not been in existence for some number of decades, it would be impossible for that report to Congress to be submitted. Is that correct?

Mr. OLSEN. If the commission does not exist, it would be difficult for it to put together a report.

Mr. GIBBONS. OK. Is there an alternative body within the Bureau of Indian Affairs or another similar organization that could substitute that report?

Mr. OLSEN. I am not aware of one, no.

Mr. GIBBONS. Mr. Olsen, the money that is in the account for the distribution to the Western Shoshone tribes has been there for a number of decades as well, since the late 1980's when the Supreme Court ruled on a final decision on the distribution of the money for

the claims that were made in that Supreme Court case. Is that correct?

Mr. OLSEN. That is right.

Mr. GIBBONS. That money has not yet been distributed to these tribal members, has it?

Mr. OLSEN. That is correct.

Mr. GIBBONS. And as it sits there today and, if this bill does not pass, will sit there tomorrow and day on and day on after that, without being distributed or used by these members as well. So this bill simply takes what the Supreme Court ordered back in 1982 and actually divests the Bureau of Indian Affairs of that money and gives the money as it now stands to the tribes as a result of that Court decision.

Mr. OLSEN. That is correct.

Mr. GIBBONS. Mr. Chairman, I have an opening statement on H.R. 884 which I would like to submit for the record on this as well.

The CHAIRMAN. Without objection, it will be included.

[The prepared statement of Mr. Gibbons follows:]

**Statement of The Honorable Jim Gibbons, a Representative in Congress
from the State of Nevada, on H.R. 884**

Mr. Chairman, thank you for holding this hearing today to discuss the Western Shoshone Claims Distribution Act.

H.R. 884 requires the Secretary of the Interior to establish a judgement roll consisting of all Western Shoshones who have at least 1/4 degree of Western Shoshone blood, are citizens of the United States, and are living at the date of enactment of this legislation.

The Secretary would then distribute and use the funds in two ways.

First, the Secretary would distribute the \$1.43 million from Docket 326-K to each person on the judgement roll through a per-capita share.

Second, using the \$1.4 million awarded under Docket Numbers 326-A-1 and 326-A-3, the Secretary would establish the "Western Shoshone Educational Trust Fund" and an administrative committee to oversee the distribution of accumulated and future interest and income for educational grants.

It is important for the members of this Committee to understand that my constituents—the Western Shoshone people—have expressed to me in an overwhelming majority, their desire to see these funds distributed.

In fact, the Western Shoshone have voted not once, but TWICE on this issue—in both instances over 90% of the voters favored the distribution reflected in this legislation.

The vast majority of the Western Shoshone people have formed a cohesive group which operates under a democratic process to express the will of the tribal members.

Just last year, in 2002, 1,647 Western Shoshone members voted in favor of the distribution while only 156 voted against it.

These numbers account for approximately 65% of the eligible Shoshone voters.

It is overwhelmingly obvious that the tribe wants these funds distributed.

It is very disturbing to me to see the will of this Tribe thwarted by a small minority who have a very loud voice.

There is one point that the opposition makes in their testimony that I would like to respond to—that is that the Indians Claim Commission (ICC) has not filed a report to Congress.

This report is one of two criteria required for final judgement of the Western Shoshone Claim.

I would like to point out that the Indian Claims Commission no longer exists, therefore making it impossible for this report to be issued.

It is also important for this Committee to understand that the U.S. Supreme Court ruled on this issue nearly 20 years ago.

The Supreme Court ruling is so clear that it made the need for the ICC report obsolete.

In the U.S. V. Dann case, the Supreme Court held that payment of the ICC award had occurred when the \$26 million was placed in the Western Shoshones' trust account, therefore giving the Western Shoshone Claim finality.

It is important to note that H.R. 884 specifically ensures that the funds distribution is not a waiver of existing treaty rights, nor will it prevent the Tribe, Band or individual Shoshone Indians from pursuing other rights guaranteed by law.

Lastly, H.R. 884 is a bipartisan effort in both the House and the Senate, and it is supported by the Nevada Delegation.

The opposition has fought this issue in the courts all the way to the Supreme Court without success.

They are now fighting it in the Legislative branch.

The time is long overdue for the will of the majority of the Western Shoshone people to prevail!

I urge each member of this Committee to support the Western Shoshone people in their endeavor to put this issue to rest once and for all.

Mr. GIBBONS. Mr. Olsen, do you know, since you have related the historical process by which various different nations or tribes within the Indians have voted up or down on this agreement to accept this money, do you know what the vote was or what the support level is for the distribution of this money?

Mr. OLSEN. I cannot give you exact numbers, but it is—based on what we know, it is a significant amount of—I mean, a vast majority of the Western Shoshone people are in support of the distribution.

Mr. GIBBONS. In fact, it is about 90 percent of the population there that supports the distribution of this money?

Mr. OLSEN. Yes, that is what I have been told.

Mr. GIBBONS. So it would be a rather small number of individuals who are opposed to this on the presumption that if accepting this money precludes any further claim or settlement that may come from any claim they have for future land?

Mr. OLSEN. Correct.

Mr. GIBBONS. But the majority do accept and do wish to have this money distributed to them.

Mr. OLSEN. Yes.

Mr. GIBBONS. Thank you, Mr. Olsen.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Attorney Olsen, I think in response to the question of supporting the legislation, I just wanted to follow up on that. I think you said you did not have—the Department or the Bureau had no objection to the legislation?

Mr. OLSEN. Yes. On H.R. 1409?

Mrs. CHRISTENSEN. 1409.

Mr. OLSEN. Yes.

Mrs. CHRISTENSEN. But does the Department support—by passing the EIS or by doing legislation to accomplish this exchange, is that a policy of the Department to—for us to legislate while the process is going on?

Mr. OLSEN. Would you answer that one?

Mr. DURAND JONES. Well, of course, as the delegate knows, we do not control the timetable or the desires of this Committee or the Congress in how it proceeds. We, at the direction of our appropriations bill, prepared the Environmental Impact Statement. It was released to the public last week, and we are now in the public com-

ment period. There will be public hearings on the EIS process. And that is one of the reasons why at this point we do not take a more definitive stand on the legislation because we still are going through the NEPA process. But we have been in negotiations with the members of the tribe concerning the restrictive covenants that are in the legislation, which we think go a long way toward protecting the values that the park is interested in, and also in defining the acreage involved in that the acreage is a little over 20 acres less than their original request. And that is a result of ongoing discussions and negotiations.

Mrs. CHRISTENSEN. I guess my main concern, I really am leaning toward supporting this bill, but my main concern is really setting a precedent or opening some doors that we might not want to open for the future by doing this piece of legislation.

Mr. DURAND JONES. Looking back, I believe there are numerous examples of the Congress acting for the sake of making good public policy before we in the executive branch have completed all of our bureaucratic steps.

Mrs. CHRISTENSEN. Do you believe that the Park Service has the authority to complete the exchange administratively without legislation?

Mr. DURAND JONES. I think it is not totally clear. The legislation for Blue Ridge Parkway has flexible boundary authority in that once lands are acquired, the boundary can be automatically expanded. However, the lands to be added to Blue Ridge are clearly outside the existing boundary as it exists today. And, therefore, we think it is best that this be accomplished by legislation rather than trying to look at it administratively.

Mrs. CHRISTENSEN. OK. I think I still have some time.

Mr. OLSEN, is it the case that the BIA currently has approximately \$8 million in Fiscal Year 2003 in Federal funds for improvements to the school that has not been spent? And if that \$8 million is there and has not been spent—I have seen some pictures of the school and I share the Administration's concern about the education of our children and the environment in which they are educated. Why has it not been spent? Or could you tell us what the immediate plans are for spending that \$8 million?

Mr. OLSEN. Certainly. I am not entirely certain. I know that the tribe is planning to use that money in order to put—use that money and put it toward the construction of the new educational facility that this legislation contemplates.

Mrs. CHRISTENSEN. But it is my understanding that is going to take about 7 years.

Mr. OLSEN. To construct the school?

Mrs. CHRISTENSEN. Yes.

Mr. OLSEN. That very well could be. I don't know exactly what the timeframe is. I know that the tribe and the Park Service have engaged in the discussions that the legislation requires and have been doing that over the course of several months. And the tribe is ready to begin work once the exchange is approved.

Mrs. CHRISTENSEN. I would just like to respectfully suggest that the \$8 million be spent—if it is going to take that long to get a school, I don't think the children should be in some of the conditions I saw for the next 7 years.

My last question would be: In your testimony, I think you said—or in the preliminary report of the EIS, it says that certain alternatives were eliminated from further study. I wonder if you would just—alternatives for the school site. I wonder if you would just respond to that. Did the alternatives that were excluded include the north end of the Cherokee business district and an area by the Aconee Road?

Mr. OLSEN. You want comment on why that was excluded?

Mrs. CHRISTENSEN. Yes.

Mr. OLSEN. I do not know and would certainly be more than happy to provide you an answer in writing. But we can certainly address that question.

Mrs. CHRISTENSEN. Mr. Chairman, I would appreciate some further information on those specific sites.

The CHAIRMAN. The record will remain open in order to allow the Administration the opportunity to provide a written response to you.

Mrs. CHRISTENSEN. And I also have an opening statement that I would like to submit for the record.

The CHAIRMAN. Without objection.

Mrs. CHRISTENSEN. Thank you.

[The prepared statement of Mrs. Christensen follows:]

**Statement of The Honorable Donna Christensen, a Delegate to Congress
from the Virgin Islands, on H.R. 1409**

Mr. Chairman, as the Ranking Member on the Subcommittee on National Parks, Recreation and Public Lands, I would like to make a few, brief comments regarding one of the bills before the Full Committee today.

H.R. 1409 would require the Secretary of the Interior to exchange approximately 143 acres of Federal land currently located within the Great Smokey Mountains National Park, known as the Ravensford Tract, for approximately 218 acres, currently owned by the Eastern Band of Cherokee Indians, known as the Yellowface Tract.

Upon completion of the exchange, the Ravensford Tract would be held in trust for the benefit of the Tribe and the boundary of the Park would be altered to exclude the land. The Yellowface tract, located some thirty miles from the Park, would be added to the Blue Ridge Parkway.

It is our understanding that the Eastern Band is pursuing this exchange to provide the Tribe with land on which to build three new school facilities, an obviously worthy goal. Furthermore, this proposed exchange appears to include lands to which the Tribe has a historical claim. We are very interested in hearing from our witnesses today regarding both of these issues.

However, it must be noted that transferring lands located within a National Park to private ownership, regardless of the use to which those lands may be put, is exceedingly rare and raises a number of serious questions. Furthermore, to approve legislation which will short-circuit an ongoing EIS process designed to address these questions, would be problematic.

It is our hope that today's hearing might provide sufficient information that, in working with the Tribe, the National Park Service and Mr. Taylor, we might be able to craft a solution that addresses the Tribe's needs without negatively impacting our most visited National Park.

We would like to thank the witnesses for their time and effort to be here today and look forward to their insights on both of the measures before the Committee today.

The CHAIRMAN. Mr. Hayworth?

Mr. HAYWORTH. Thank you, Mr. Chairman. Mr. Chairman, thank you for holding this hearing. And I have more than passing interest in H.R. 1409. I am pleased to be a cosponsor of this legislation, and I just wanted to take time—it is a common affliction that cer-

tainly my co-Chair on the Native American Caucus knows, indeed all Members of Congress here, of having to be three places at one time during the course of a day. But I wanted to stop by, and, Mr. Chairman, I have an opening statement for the record which I would like to submit. And I also just wanted to thank Chief Leon Jones and others from the Eastern Band of Cherokee Indians for being here to discuss what is transpiring there. I believe this is an innovative win-win solution that the Park Service and the Eastern Band has worked out. And as mention was made in previous testimony, this is not uncommon, but this legislative solution is needed. So I look forward to reviewing the record. I thank my friends from the Eastern Band for being here. And again, Chairman and colleagues, thank you for holding the hearing.

Mr. KILDEE. Would the gentleman yield?

Mr. HAYWORTH. I would gladly yield to my good friend from Michigan.

Mr. KILDEE. I want to thank the co-Chair of the Native American Caucus because our staffs have worked together, studied this very, very thoroughly, and have concluded that this is a very, very good exchange. And I appreciate your continuing good work on this and other issues.

Mr. HAYWORTH. I thank my friend from Michigan. As this illustrates, though we divide by part for purposes of the rules of the House, it is interesting that in the case of the first Americans, there are only two types of people who serve in Congress: those who represent what we now call Indian country and those who represent what was once Indian country.

And with that acknowledgment, I would yield back to the balance of my time with thanks to the Chair.

The CHAIRMAN. Thank you.

Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. Olsen, there are several questions that I have, and part of it is a little bit of my inquisitive nature on what happens if the tribe decides to use it for gaming. Are there covenant restrictions?

Mr. OLSEN. We are talking about H.R. 1409, the Eastern Band of Cherokee bill?

Mrs. NAPOLITANO. Right.

Mr. OLSEN. OK. Well, gaming is explicitly prohibited in the legislation. I don't believe that there is a remedy provided in the legislation, but it is explicitly prohibited. And our understanding is that the tribe has no intent to construct any sort of gaming facility on that land.

Mrs. NAPOLITANO. Well, the Federal Government has long ignored my Indian brothers and sisters, and I think it is time we owned up to some of the responsibilities that have been ignored for many, many, many generations.

I am concerned that it may begin not only setting a precedent, but if there is such a covenant that prohibits gaming, that we are sure that there is—sometimes there is no other way for the tribes to be able to survive, if you will. They need help and we certainly should be able to provide them, which leads to me the question of how old is the school on the other bill—or, no, on that one, that these deplorable conditions are found, that the Department of Inte-

rior or Park Service or the agencies, whoever's jurisdiction it falls under, have not taken action to be able to assist in the construction or reconstruction or putting them in a condition that they will be usable.

When I look at some of the information about they are using a condemned building, that sends shivers up my spine. As a grandmother, I would not tolerate it, and I don't see why we should allow the Federal Government not to take action to remedy those conditions.

Mr. OLSEN. Understood, and as I stated before, we certainly feel that it is in the best interest of this tribe for the legislation to move forward, and—

Mrs. CHRISTENSEN. OK, but this has not happened yesterday. Why has action not been taken to remedy the conditions under which these children go to school?

Mr. OLSEN. I don't know. We are faced—again, I mean, it is the same answer that I gave before. We are faced with a significant backlog. I understand that it is a problem, and it is a priority to correct, and we are doing what we can little by little to correct those problems.

Mrs. CHRISTENSEN. Mr. Chair, maybe we should have a hearing, Mr. Chair, Chairman Pombo, I suggest, to see what the condition of the Indian schools are in so that we may not hear it in this Committee room at the time we are trying to work on legislation to address some of the shortfalls that we have had in those areas.

The CHAIRMAN. If the lady will yield to me, we are actively looking at that. This is obviously part of that process.

I am told that this particular school is at least 40 years old. That is 40 years of mismanagement that has occurred over the years that has allowed this to happen. I don't think there is any possible way that Mr. Olsen can explain to you why in the last couple of months that he has been on the job that over 40 years this school was mismanaged and things happened in the BIA. But if you want to get serious about taking care of these problems, we have got to seriously look at the entire issue of how we have dealt with the BIA over the last 100 years. That is where the real problem is.

Mrs. CHRISTENSEN. Let's do so, sir.

My next question will be on the distribution on 884. How many members will receive these dollars? Because I was looking at your report, and it says 1,230 voted, 3 opposed, but that is just the voting members. How many members are there in the tribes that are getting reimbursed? And are the ones opposing going to be receiving remuneration?

Mr. OLSEN. There are approximately 6,000 to 6,500 who would be receiving money through the distribution, and those who are opposed are included.

Mrs. CHRISTENSEN. OK. The next question—

Mr. OLSEN. They can choose to apply, but they are eligible as everyone else.

Mrs. CHRISTENSEN. But does accepting the funding prevent their ability to litigate in the future toward the return of their land?

Mr. OLSEN. I am sorry. I did not hear your question.

Mrs. CHRISTENSEN. Would their accepting money preclude them from enjoining to get back their tribal lands that they are seeking, those that are opposed because of that?

Mr. OLSEN. No, it would not. But we feel that pursuant to the Treaty of Ruby Valley, which is the treaty at issue, that was a treaty of peace and friendship, and there is some question about whether the Western Shoshone people had title to that land, recognized title to that land.

Mrs. CHRISTENSEN. Thank you, Mr. Chair.

Mr. KILDEE. Mr. Chairman, parliamentary inquiry. I have a markup over on my other committee. Are we under general leave to submit additional questions in writing to the witnesses today?

The CHAIRMAN. Yes, all the witnesses will be asked to respond to any questions that are submitted in writing, to answer those in writing so that they can be included in the hearing record.

Mr. KILDEE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jones?

Mr. JONES OF NORTH CAROLINA. Mr. Chairman, thank you very much, and I want to say to Mr. Kildee before he leaves, thank you for your statement regarding your longevity and trying to help the Indians who have certainly not been treated fairly in the history of our country. So I thank you as well as the Chairman for his comments.

Mr. Chairman, thank you for bringing both these bills up. It is nice to see the bipartisan support for this legislation as well as others. H.R. 1409 was introduced by Congressman Charles Taylor. The Cherokees live in his district, and this has been an issue that, when Chief Leon Jones is on the next panel, I think he can tell the Committee as well as myself the long history of trying to get this land exchange accomplished.

Regarding Mrs. Christensen's statement about taking 7 years, that possibly could be if it went through the administrative process. I don't know, and I would like for Mr. Olsen in a moment to answer that question.

The beauty of this is that we all get on the floor of the House from time to time and talk about our children and wanting them to have the best education possible so they can compete in the world. And when you see what the Indian children have to deal with—I want my staffer if he would, to hold up just four enlargements so you can really see just how bad the school is.

The first one is the steel beam rusting through the ceiling at the school. That in itself—if it is not condemned, it should be condemned.

Then the next photograph is a major crack in the wall of the school.

The third photograph is cracks in the gymnasium.

I think those three photographs are deplorable. The last photograph would be the temporary building that the students are trying to learn in and become successful.

This is a situation that I think requires this legislation, and I am delighted, Mr. Chairman, that you are holding this hearing.

The problem is I do not understand those that will be in opposition to this land exchange. Mr. Olsen, would you say that the land

swap—what the taxpayers will be receiving from the Cherokee Indians—is an excellent deal for the taxpayers of this country?

Mr. OLSEN. The tribe would be giving up 218 acres of pristine land that, arguably, would—it would go under Park Service protection, would arguably provide for a better—or provide for protection of the view shed. The tribe would be obtaining 143 acres, which, comparing the two, obviously there is a 70-acre difference that the tribe is giving up to the park.

Mr. JONES OF NORTH CAROLINA. Mr. Chairman, with that, I think many points have been made before I had my opportunity, and I hope showing the photographs to the members of the Committee will re-emphasize the need for this land exchange. So, with that, I yield back my time.

Mr. GIBBONS. [Presiding.] Thank you, Mr. Jones.

The gentleman from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Boy, that was quick. Thank you, Mr. Chairman. I just want to offer my full support of the gentleman's bill from North Carolina, Mr. Taylor, and, of course, to my colleague, Mr. Jones. This is in reference to H.R. 1409, and I want the gentleman to know that he certainly has my full support on this land exchange proposal.

Mr. Chairman, as you know, it is always comity and practice as a matter of courtesy to members and our colleagues. Given the fact that you had introduced this legislation with reference to Shoshone Tribe, presumably predominantly in your State of Nevada, I would be the last person to second-guess your wisdom and expertise and understanding of what has been the problem for all these years.

At the same time, I don't think there is any negative connotation in terms of your participation. You are just simply trying to implement what has been decided by the Indian Claims Commission and also in reference to what the Supreme Court had ruled.

But I had also read that there are some real strong feelings among some of the Shoshone members, tribal members, on how the Supreme Court ruling came about, the fact that you have got the Te-Moak, the Duckwater, the Ely, the Fallon, the Fort McDermitt, the Yomba, these are all different clans that make up the Shoshone Tribe, if I am to understand it correctly. This is my understanding of the bill.

What are we talking about, Mr. Olsen, in terms of the principal that is to be distributed if this bill passes? I read here \$26 million, with interest, \$130 million, but then I hear someone else, it is only \$900,000. Can you clarify what exactly we are talking about?

Mr. OLSEN. Refreshing my recollection here, the distribution that would take place as a per capita payment to the approximately 6,500 Western Shoshone people would be \$142,472,644, which works out to be roughly \$30,000 per person.

Mr. FALEOMAVAEGA. Well, right now I am going to register as a member of the Shoshone Tribe.

[Laughter.]

Mr. FALEOMAVAEGA. The first opportunity I have. I found out that some of my ancestors settled among the Paiutes and the Shoshones in Nevada a thousand years ago.

Mr. Olsen, there is one concern, I think, with some of the tribal members in raising the question how the U.S. Government got to

obtain the land that belonged to the Shoshone. Was there a treaty agreement or relationship between the Shoshone Tribe and the U.S.? Because we have sisters here by the name of the Dann sisters that had their cattle got taken by the BLM with no reason whatsoever. I mean, this is ridiculous.

Could you explain how the Federal Government ended up owning the so-called Shoshone tribal lands?

Mr. OLSEN. One of the claims is, as I mentioned before, for the taking of land, and it was a result of the gradual encroachment of the United States on the Shoshone land.

Mr. FALEOMAVAEGA. Was it the United States or the ranchers?

Mr. OLSEN. Both.

Mr. FALEOMAVAEGA. Both. And we are talking about how much was taken by the Federal Government that belongs to the Shoshone people? Acreage. Half of Nevada?

Mr. OLSEN. Well, there is a difference between what is being claimed by some who are opposed to this distribution and what is described, basically. And I cannot give you an exact number of acreage, but, again, certainly will be happy to—

Mr. FALEOMAVAEGA. My colleague from Nevada tells me one-third of the State of Nevada belonged to the Shoshone people.

Mr. OLSEN. That is a big piece of land.

Mr. FALEOMAVAEGA. Big piece of land. And it was taken by the Federal Government with no treaty agreements, nothing. This is what you might call adversary possession of the land. I go back to my original question. Was there a treaty relationship between the Federal Government and the Shoshone people allowing the Federal Government to take the land?

Mr. OLSEN. Referring back to the treaty, the treaty allowed people to pass through the land, but, you know, going back to what I had said before, we are talking about it is a taking, the gradual encroachment on the land. And that is about the best answer I can provide you now, and we will certainly, you know, provide a better historical perspective if that is what you are after.

Mr. FALEOMAVAEGA. So what we are looking at in this proposed bill is the distribution of funds of approximately \$140 million.

Mr. OLSEN. Correct.

Mr. FALEOMAVAEGA. Among some 6,500 Shoshone.

Mr. OLSEN. That is right.

Mr. FALEOMAVAEGA. Among the four different clans that make up the Shoshone Tribe.

Mr. OLSEN. Among the four successor bands as well as others who would be entitled to that distribution.

Mr. FALEOMAVAEGA. I see. And if by chance there is no agreement, the interest continues to buildup on this fund.

Mr. OLSEN. It will continue to grow.

Mr. FALEOMAVAEGA. Are the Shoshone people so anxious that they really want the money or do they not care about the money? I get the impression from Mr. Yowell's testimony here that it is not the money, but the principle involved here on how the Federal Government ended up owning what is known as Shoshone territory. I think maybe this is where we are having problems and where some of the tribal members have very strong feelings about this issue because once we establish the foundation of how this came about in

the first place, then the funds become relevant in terms of what else needs to be done.

Is there any portion of this one-third of the State of Nevada that was used for nuclear testing?

Mr. OLSEN. I am not in a position to—

Mr. FALEOMAVAEGA. Have you been to Nevada?

Mr. OLSEN. I have been to Nevada, certainly.

Mr. FALEOMAVAEGA. But what portion of the State of Nevada are you aware of that we are talking about?

Mr. OLSEN. Congressman, can you—

[Laughter.]

Mr. GIBBONS. Predominantly the Shoshone area would be the eastern part of Nevada.

Mr. FALEOMAVAEGA. Eastern part, I see.

Mr. OLSEN. I am not aware—I cannot answer whether there has been nuclear testing on that.

Mr. FALEOMAVAEGA. Mr. Chairman, I think my time is up. I will wait for the second round. Thank you.

Mr. GIBBONS. The gentleman from Tennessee?

Mr. DUNCAN. I have no questions, Mr. Gibbons. I thank you for calling this hearing, but since I did not hear the testimony, I will not ask any questions at this point, and I will listen to the next panel.

Mr. GIBBONS. Ms. Bordallo is next.

Ms. BORDALLO. Thank you, Mr. Chairman.

Mr. Olsen, I have a question on H.R. 884. How many trespass violations have been issued on Western Shoshone ancestral lands? Is the use of the land an ongoing concern to the Department? I believe it was approximately 3 years ago when a trespassing violation was issued for grazing on the BLM land without a permit. But I wanted to know if this is an isolated issue, or are there other land-use violations?

Mr. OLSEN. There have been trespass violations issued to both Western Shoshone and non-Indian people.

Ms. BORDALLO. You don't have a number?

Mr. OLSEN. I don't have a number.

Ms. BORDALLO. Has it been frequent?

Mr. OLSEN. Well, I know that it is more than one. I don't know how frequent it is. But we can certainly obtain that information and get that back to you.

Ms. BORDALLO. All right. And my other question, Mr. Chairman, does the treaty preclude a land settlement?

Mr. OLSEN. No, the treaty does not preclude a land settlement.

Ms. BORDALLO. All right. I have no further questions, Mr. Chairman.

Mr. GIBBONS. Mr. Udall?

Mr. TOM UDALL. Thank you, Mr. Chairman.

Mr. Olsen, your testimony refers to the support for the distribution of funds by three of the four successor tribes. What documentation is there that shows this support?

Mr. OLSEN. Well, tribal resolutions, basically, the resolutions that I referenced before in my testimony.

Mr. TOM UDALL. Was there an election or anything like that that was supervised by the BIA?

Mr. OLSEN. Over the course of a number of years, there have been various referendum votes, surveys, but they were not supervised by the Bureau of Indian Affairs.

Mr. TOM UDALL. So this was not an official election supervised by the BIA and then officially accepted as an election held by a sovereign Indian tribe?

Mr. OLSEN. It was not supervised by the Bureau of Indian Affairs.

Mr. TOM UDALL. And yet you are willing to testify today that 90 percent—is that the figure you have used—90 percent of the tribe support this bill and support the distribution?

Mr. OLSEN. Ninety percent is the number that I have heard. I used “vast majority”—

Mr. TOM UDALL. That is your figure? That is the Interior Department’s figure?

Mr. OLSEN. That is the number that Congressman Gibbons used, but that is the number that I have heard. I would say a vast majority of the Western Shoshone members. I mean, 90 percent is probably fairly accurate.

Mr. TOM UDALL. Can you give the Committee any documentation of that? Is there any evidence of that other than in several resolutions? There is no certified election? I mean, what is there for the Committee to rely on to show that there is this kind of, as you put it, overwhelming or the 90 percent figure that has been used by the Chairman, what is there to show that?

Mr. OLSEN. We will certainly provide, be more than happy to provide whatever we have to the Committee that demonstrates the support, absolutely.

Mr. TOM UDALL. Well, I would very much like to see that kind of evidence, and please, Mr. Chairman, if it is acceptable, have it submitted for the record.

My understanding, there are about 6,000-plus members, something in—

Mr. OLSEN. Yes, 6,000-plus who would be eligible for the distribution.

Mr. TOM UDALL. And 1,500 voted for it? Is that right?

Mr. OLSEN. That is, I believe, the number.

Mr. TOM UDALL. Then how do we get to 90 percent and overwhelming if we—that is only one-quarter.

Mr. OLSEN. Well, as I am being advised here, the 6,000 also includes minor children.

Mr. TOM UDALL. So do you know the figure for the 6,000-plus for adults that would be eligible to vote?

Mr. OLSEN. I don’t. I don’t.

Mr. GIBBONS. Mr. Udall, would you yield to me to answer the question?

Mr. TOM UDALL. Well, I would like them to answer the question, actually, because I think that is who normally certifies an election by a tribe, the Bureau of Indian Affairs and the Interior Department, if they are able to answer. No disrespect at all to you, Mr. Gibbons, but—

Mr. OLSEN. I am unable to answer that question. I don’t know what the percentage of voting adults—

Mr. TOM UDALL. Are you able to answer?

Ms. WEST. First of all, I would like to clarify that most elections are not—tribal elections are not certified by the Bureau of Indian Affairs. They are certified by the tribes themselves. The only elections that we certify are those that are required to be certified within the tribal governing document. This is not the type of election that the Secretary had the authority or the requirement to certify.

Mr. TOM UDALL. Is the Interior Department committed to begin negotiation with the Western Shoshone Nation to establish a culturally and economically adequate land base for all Federally recognized Western Shoshone tribal governments and communities?

Mr. OLSEN. If that is something that the Committee wanted to pursue, I am sure that we would be more than happy to participate and provide support and assist in that.

Mr. TOM UDALL. Is it accurate to say that—the Federally recognized Shoshone tribes in Nevada currently hold a total of about 24,000 acres of Indian trust land. This is less than one one-hundredth of the Western Shoshone ancestral lands. Is that fair to say that?

Mr. OLSEN. I believe that 24,000 acres is the correct figure of trust land.

Mr. TOM UDALL. And is it the position of the Interior Department that they should have more land to have an economically viable land base?

Mr. OLSEN. On that I cannot say that that is the position of the Department of the Interior.

Mr. TOM UDALL. And, Mr. Gibbons, Mr. Chairman, if I have time, I will be happy to yield to you to insert anything in the record that you would like to have in there.

Mr. GIBBONS. That is all right, Mr. Udall. I think the answer was adequately given before. But I did notice your time is up.

Mr. Baca?

Mr. BACA. Thank you very much, Mr. Chairman.

I guess I have one question. Have the Western Shoshone Indians expressed any opposition to this measure?

Mr. OLSEN. Have Western Shoshone people expressed opposition?

Mr. BACA. Yes.

Mr. OLSEN. I am sorry. I am not hearing very well. Yes, there have been tribal members, Western Shoshone people, who have expressed opposition.

Mr. BACA. And what do you think the consequences of that will be?

Mr. OLSEN. The consequence of their—

Mr. BACA. The opposition right now. Is there any formal agreements that they can—

Mr. OLSEN. I am not aware of any formal agreement. I think it depends on what the community decides to do with the legislation.

Mr. BACA. Will the funds improve the economic conditions of the Western Shoshone Indians?

Mr. OLSEN. I am assuming that it would. A \$30,000 payment to each eligible member, I think the feeling is that, yes, it would improve the economic condition. That is why I think there is a desire for this to move forward. This money has been sitting. The Western Shoshone people are entitled to it. It is their money. And I think

the feeling is that, yes, it would improve the economic condition. It is their money, and they should receive it.

Mr. BACA. What are the current conditions right now?

Mr. OLSEN. I can't speak specifically. I have not visited the area. But my understanding is the vast—well, a good portion of the people are living in poverty, that it is—suffer some. It is a desperate situation.

Mr. BACA. Well, it is something that I would support. I believe when you look at sovereign countries and you look at Native—we have not given enough, even from what we have done—we have always taken, and it seems like we have the right to give back not only for sovereignty but to improve conditions in education, health, road conditions, tribal pride, tribal respect, and give them back a portion of the land. I think it is what we have done; we have taken the land away. It is time that we give it back as well. And that is toward any Native American Indian that we have in this country. Hopefully, if we have hearings, we will produce and we begin to identify and to give back to Native Americans, because they truly are the first people in this country and should be recognized as contributors. And I think we have an obligation to improve conditions within each of the reservations as well, and we should not rely on gaming of others, but also as part of our responsibilities to make sure that conditions are improved and they have the same rights that anybody else. Because when we talk about leave no child behind, that means in our reservations and other places as well, from both educational, technology, health improvements. So hopefully we will work along those areas and that we as individuals can all come together in a bipartisan and again support our Native Americans who are truly in a lot of these conditions that are very poor conditions. And I think it is our responsibility to do whatever we can to make conditions a lot better.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, Mr. Baca. Just for the Committee's record, this bill deals only with the distribution of an account which was a judgment from a court to the tribes, and without this distribution, of course, this money sits in that account growing interest, helps no one, has not helped anyone for more than 20 years. And the purpose of this bill is not to adjudicate the validity of anybody's claim on the land, but to distribute the funds that are in this account.

We all agree with your comments, and we agree with the status of our Native Americans and needs of those individuals. But this bill does not deal with that.

Right now, since we have finished discussion and all members have questioned this panel, I would like to dismiss this panel and call up the second panel.

Mr. GIBBONS. The second panel is Mr. Leon D. Jones, Principal Chief, Eastern Band of Cherokee Indians; Cory Matthew Blankenship, Eastern Band of Cherokee Indians; Don Barger, Senior Regional District Representative, National Parks Conservation Association.

Gentlemen, while we are getting prepared, we have a custom in this Committee to swear you in, so if you would all rise and raise your right hands?

[Witnesses sworn.]

Mr. GIBBONS. Let the record reflect that each of the individuals testifying before us today has responded in the affirmative, and I would turn to my friend, Mr. Jones, for an introduction of the witnesses.

Mr. JONES OF NORTH CAROLINA. Mr. Chairman, on behalf of Congressman Charles Taylor, I am delighted to introduce Chief Leon Jones and Cory Blankenship, and I will be very brief in the introduction.

Chief Jones is the Principal Chief of the Eastern Band of Cherokee Indians based in Cherokee, North Carolina. He served as tribal court judge and council member before serving as chief, the only person to serve in all three branches of Eastern Cherokee government. Also, Chief Leon Jones is a 26-year veteran of the military, both Air Force and the United States Marine Corps. We welcome you, sir.

Cory Blankenship is a recent graduate of Cherokee High School and a product of the Cherokee school system. He will attend NC State in Raleigh, North Carolina, on a 4-year academic scholarship, and is a long-time advocate of the land exchange, and I welcome both these gentlemen to the Committee.

Mr. GIBBONS. Thank you very much, Mr. Jones.

We will begin now with the testimony of Chief Leon Jones. You are welcome to the Committee. The floor is yours. We look forward to your testimony, Chief Jones.

**STATEMENT OF LEON D. JONES, PRINCIPAL CHIEF,
EASTERN BAND OF CHEROKEE INDIANS**

Mr. LEON JONES. Thank you, Mr. Chairman. Mr. Chairman, my name is Leon Jones. I do have the honor of being the chief of the Eastern Band of Cherokee Indians in North Carolina.

Mr. Pombo, Ranking Member Mr. Kildee—I am a little nervous, as you can probably understand—members of the Resource Committee, and other distinguished Members of Congress, thanks for this opportunity to be here.

I have a prepared statement. However, everything that is in my prepared statement has been said. There is no need for me going back over things you have already heard and repeating. I am going to hit a couple of high points and then talk from my heart, if you don't mind, sir.

This is very important not only to the Eastern Band of Cherokee Indians but the entire nation. As has been said by our President and by each one of us as we campaigned for office, education is our highest priority, to educate our children, leave no child behind. Our President says that and so do I. I have committed myself to that.

The land under consideration is tremendously important. It is important to the future of my tribe, and it is important to the future of the United States because we do want to educate every child we have.

The land under consideration, the Yellow Face, or Waterrock Knob, is a piece of property that was pointed out by the park as one that they desired, one that would be of benefit for them. We reacquired that piece of property, and we are now ready to make the exchange.

We have some pictures. We have pictures of the view of how beautiful Waterrock Knob is. You will see them right here. And this piece of property is in danger because—has been in danger because the properties on both sides of it have been bulldozed and house sites have been prepared.

This is the view from the Blue Ridge Parkway, one that the Blue Ridge Parkway was designed to protect, and we want to help the Blue Ridge Parkway to protect this property.

Seventy-five years ago, the property that we are asking for was a lumber mill. You can see that on my right. It is not pristine property. This property here is 218 acres of very pristine property. It has water on it. It has endangered species on it, Federally endangered species. Those species need to be protected.

Conversely, the piece there that you see has been disturbed greatly. It is the ancestral lands of the Eastern Band of Cherokee Indians. That has been proven through archaeological studies. We now want to use it for schools to educate our children. This piece of property was supposed to be returned to my tribe back in 1940 when the Blue Ridge Parkway was built. For some reason, when it reached Congress, this piece of property was taken out of the legislation and not returned to us. The money was given to us to buy it, and then we were not allowed to. So we feel that this property is our ancestral lands, and we feel that we should have it back. We need it for our children. We want to build three schools: an elementary, a middle school, and a high school. Having all three schools together will help us teach our native language along with a modern curriculum.

We do it in a multi-age, communal setting that is consistent with our culture. The vision will replace the dilapidated, overcrowded, and dangerous schools that the Government built for us years ago and that we still use. You have seen some of the pictures of the schools in the poor condition that they are in.

To address the Park Service concerns, we have already spent over \$1.5 million on environmental and archaeological studies. We have designed and redesigned the site plan to minimize any impact. We have changed the footprint of this school to miss things that were very important. The current site plan preserves the views from the Blue Ridge Parkway. It provides a buffer around the wetlands next to the exchange tract. It avoids any impact on 12 of the 14 archaeological sites found on this property. And it calls for approximately \$3 million of careful research for the two sites in the construction area.

We have taken all the steps to preserve and to do a fair exchange. The land that we want to exchange is the highest piece of property owned by a person east of the Mississippi, highest piece of pristine land in the United States—or east of the Mississippi, I should say. We have purchased it. The option on the property was about to run out. We went ahead and purchased it so that we could exchange it for this piece of property.

The most important thing for me, ladies and gentlemen, is the children and the future of this tribe. The future of this tribe, like the future of the United States, depends on educating our people in the highest and best way that we know how, and that is exactly what we want to do.

Before I close, I want to thank the National Park Service Director Fran Mainella and the people working with her in the Interior Department for dealing in good faith with the Eastern Band over the last 4 years. Although we have not always found agreement on every issue, they have demonstrated a willingness to work through the issues, and in many cases, we have become friends.

Chairman Pombo and members of this Committee, the Eastern Band of Cherokee Indians has the resources to make this vision a reality. You can make it possible. Please help us as we strive to leave no child behind. Help us to protect our unique culture, our unique heritage, our language, and our identity. For the benefit of the Cherokee people and the American public, we respectfully ask that you support our land exchange.

Thank you, ladies and gentlemen.

[The prepared statement of Leon Jones follows:]

**Statement of Principal Chief Leon Jones,
Eastern Band of Cherokee Indians, on H.R. 1409**

Chairman Pombo, Ranking Member Rahall, Members of the Resources Committee and other distinguished Members of Congress, thank you for the opportunity to speak today.

I come before you to speak about an important issue—perhaps the most important issue—facing our two Nations, the United States and the Eastern Band of Cherokee. That is the education of our children. Our Nations cannot be strong without well-educated members. President Bush and this Congress have pledged to “leave no child behind,” and I have made the same pledge for my people, the Cherokee people.

The Ravensford–Yellow Face Land Exchange under consideration by this Committee today is tremendously important for the future of the Eastern Band of Cherokee. But first let me discuss why it is important for the National Park Service and the American public.

With Congress’s approval of this exchange, the Yellow Face (or Waterrock Knob) tract will be placed under the protection of the National Park Service. We asked the Park Service what land they would like to acquire, and they selected this property, among other options.

The views from Waterrock Knob are increasingly threatened by non-Indian housing development. The parcel next to the Yellow Face tract, and just beyond this view, already has house sites bulldozed on it. Yellow Face, and the splendor of this view from Waterrock Knob, urgently need protection so they can be enjoyed by the American public for years to come. In contrast, the Ravensford tract that we seek for schools is a smaller, disturbed, and less valuable piece of land. Seventy-five years ago, it was a lumber mill town. We have a picture of what it looked like then. You can see that it was anything but pristine. We also have pictures of its current uses. It is a road corridor for tribal members and visitors traveling between downtown Cherokee and the Big Cove Community. It is also the corridor for major power, telephone, water and sewer lines serving both Big Cove and the National Park Service facilities across the river from Ravensford.

The Ravensford tract currently splits the Qualla Boundary, isolating the Big Cove community from the rest of the Qualla Boundary. Archaeological research has confirmed what we already knew—that it is part of our ancestral homeland. Sixty-five years ago, we negotiated a deal with the United States to exchange the Ravensford tract for the Blue Ridge Parkway right-of-way through our land. At the last minute, the deal was changed without our knowledge, and Ravensford was removed from the legislation. The details of this unfortunate history are described in my written testimony.

But let me get back to the main reason I am here. This exchange will provide the Cherokee people with the only suitable location we can get to build a new three-school education center. We envision this new campus as a “cultural village” where Cherokee children can honor their past while embracing the future. Having all three schools together will help with the teaching of our native language and the modern curriculum. And we can do it in a multi-age, communal setting that is consistent with our culture. This vision will replace the dilapidated, overcrowded and dangerous schools that the Government built for us years ago and that we still have to use.

We plan to build state-of-the-art facilities with all of the modern requirements for a school system, and with cultural features like a seven sided “council” room in the school. The schools are designed for geothermal heating to be both safe and comfortable for our children, and friendly to the environment.

Before I close, I want to thank National Park Service Director Fran Mainella, and the people working with her in the Interior Department for dealing in good faith with the Eastern Band over the last four years. Although we have not always found agreement on every issue, they have demonstrated a willingness to work through the issues. And in many cases, we have become friends.

Chairman Pombo and members of the Committee, the Eastern Band of Cherokee Indians has the resources to make this vision a reality, and you can make it possible. Please help us as we strive to “leave no child behind.” Help us protect our unique culture, heritage, language and identity. For the benefit of the Cherokee people—and the American public—we respectfully ask you to support this land exchange.

Positive Impacts of the Land Exchange

NPS will acquire the Yellow Face tract from the Eastern Band and protect it for the American public:

- Includes 218 acres adjacent to the Blue Ridge Parkway.
- In the foreground view from Waterrock Knob Visitor Center.
- Area is under rapid development; home sites are now available on an adjacent tract.
- Endangered species: Carolina Northern Flying Squirrel, Rock Gnome Lichen.
- Seven acres of high-altitude wetland seeps.
- Fair market value exceeds Ravensford value.

Transfer of Ravensford to the Eastern Band with agreed restrictions has many benefits:

- Benefits the Eastern Cherokee and American public by helping preserve Cherokee language and culture.
- Cherokee children can be moved from the dilapidated, overcrowded, and dangerous elementary school to a safer location with less traffic.
- Helps United States meet a high priority goal of improving Indian education.
- Reunites two parts of the Cherokee reservation and restores Tribal territorial integrity.
- Rectifies an historical injustice to the Eastern Band (1940 Act).
- The Eastern Band’s agreement to reduce its request from 168 to 143 acres protects resources.
- Wetlands and alluvial forest adjacent to site remain in NPS ownership. EBCI has offered to help restore wetlands and will likely create additional wet meadow areas.
- 12 of 14 archaeology sites are preserved in place without development. Knowledge increased through careful research of the two archaeology sites affected by construction.
- Development restrictions protect views from Parkway near Ravensford.
- Federal environmental and cultural resource laws will continue to apply.
- No Federally-listed threatened or endangered species have been found at Ravensford.

History of Ravensford Tract and Eastern Band of Cherokee

The Eastern Band of Cherokee Indians’ seeks to reunite the Big Cove Community with the rest of the Qualla Boundary based in part on our need for territorial integrity. The Ravensford Tract is the transportation, utilities, and geographical link between these communities. Reunification of the Boundary through the Ravensford Tract is important to the Tribe for significant historical reasons.

The history of the Cherokee Nation is known to most Americans. Between 1700 and 1838, European-Americans settled on the Tribe’s original territory of over 100,000 square miles. Despite a number of treaties over more than a century promising no further incursions on the Nation’s territory, most Cherokees were forcibly removed from the Southeast over the Trail of Tears to Oklahoma. The Eastern Band consists of descendants of those Cherokees who remained in the mountains to avoid the Trail of Tears, and those who returned from Oklahoma afterward. Through determination and with some assistance from friends like Will Thomas, members of the Eastern Band eventually repurchased a small part of the Nation’s original territory. They fought lawsuits in the late 1800’s to keep their land and finally, in 1925, deeded the repurchased land to the United States to be preserved in trust for the Tribe.

When European-Americans settled in the Cherokee Nation's territory, they established themselves firmly in the rich bottomlands like the Ravensford Tract. After the Trail of Tears, it was difficult for the Eastern Band to repurchase very much of this prime land, so most of the present day Qualla Boundary is steep and difficult terrain.

The Ravensford Tract resonates with the Eastern Band as part of that history. Ravensford was also involved in a particular injustice the Tribe suffered in the mid-20th Century. In 1933, the Tribe had granted a right-of-way to the State of North Carolina for a highway from Soco Gap to Cherokee, to assist with transportation and economic development. That project was put on hold in 1935 when the United States Interior Department proposed to locate the last 12 miles of the Blue Ridge Parkway along that route through Soco Valley. When the Tribe learned that the Parkway would take valuable bottomland on which many enrolled members lived and require a 200 to 800 foot inaccessible right-of-way, it soundly rejected that proposed route. Tribal leaders and the Interior Department negotiated for several years to find another route, despite significant opposition among influential Tribal members. In 1939, the Secretary of the Interior proposed legislation allowing him to condemn a right of way over the Qualla Boundary. H.R. 6668, 76th Cong., 1st Sess. (1939). The Senate Committee on Indian Affairs sent a representative to negotiate with the Tribe in North Carolina. Over the course of a year, an acceptable compromise was negotiated.

The compromise negotiated with the Senate's representative is laid out in a revised Senate Committee version of H.R. 6668. See Senate Report No. 1491 at 2 (1940). The compromise had several elements: (1) The Tribe agreed to a ridge route over its territory for the Blue Ridge Parkway. (2) The State of North Carolina agreed to go back to its original plan to build the Soco Valley highway with public access for Tribal members and visitors. (3) The State agreed to pay the United States, in trust for the Tribe, \$40,000 for the Blue Ridge Parkway route. (4) With those funds, the Tribe would be permitted to purchase replacement lands adjacent to the Tribe's territory in the Great Smoky Mountains National Park, including both the Boundary Tree Tract and the Ravensford Tract. The Chief and Tribal Council supported this agreement, although the Parkway was still opposed by a vocal minority in Cherokee.

The agreement was approved and reported favorably by the Senate Committee on Indian Affairs. The House sponsor of the original Bill, Congressman Weaver, testified at the Senate Committee's hearing on the Bill and indicated his support for the negotiated agreement, including the transfer of both the Boundary Tree and Ravensford Tracts. Transcript of Hearing, Senate Committee on Indian Affairs, April 22, 1940.

When the Bill came up for consideration on the Senate floor, however, a Senator from Oklahoma presented an amendment that deleted the Ravensford Tract. Congressional Record, May 28, 1940, at 6989. There is no indication in the record of the reason for that change, nor that the Tribe was notified. Typical of the United States' treatment of the Cherokee, another agreement negotiated in good faith was modified without the Tribe's consent, and the Ravensford Tract remained out of reach.

The 1940 legislation removed 1,333 acres from the Tribe's territory for the Blue Ridge Parkway, and effectively landlocked an even larger portion of the Tribe's high elevation property. It also completely severed the Big Cove Community from the rest of the Qualla Boundary geographically. In exchange, the Tribe was allowed to purchase 905 acres of the Boundary Tree Tract, for a net loss of at least 428 acres and effective loss of use of many more acres. If the 322-acre Ravensford Tract had not been eliminated from the Bill at the last minute, then the acreage exchanged would have been closer to equal.

This history is the source of the belief expressed by some Cherokees today that the Ravensford Tract should be given or sold to the Tribe. The Tribal leadership, however, recognizes that the NPS Director does not have that authority and has offered to enter into a fair value-for-value land exchange.

The Tribe gave up much of its hard-won land in 1940 so the United States could complete the Blue Ridge Parkway, and believes the United States should live up to the commitment its representatives made to the Tribe. The Ravensford Tract should have been sold to the Tribe over 60 years ago and should be exchanged today so the Tribe can reunite the two communities and build its education and culture center.

Archaeological research has confirmed that the Ravensford Tract is part of the Eastern Band's ancestral homeland. The Cherokee Nation was forced to give up over 100,000 square miles of land in the 18th and 19th centuries for the benefit of the American public. This land exchange would involve returning less than 1/4 of a

square mile in exchange for a larger, more pristine, and more valuable tract that needs protection.

Mitigation Measures Agreed to by the Eastern Band of Cherokee

The Eastern Band has demonstrated its good faith in negotiations with the National Park Service. The Eastern Band has agreed to spend over \$1.5 million to study the feasibility of an exchange, has reduced its acreage request, and has agreed to development restrictions to avoid or mitigate impacts on natural and cultural resources. The Eastern Band expects to spend more than \$3 million on further archaeology research if the exchange is approved. Detailed mitigation measures will include the following:

<p>In General</p>	<ul style="list-style-type: none"> ▪ EBCI and NPS have agreed, if an exchange is approved, to develop mutually agreed upon standards for size, impact, and design of construction on the Ravensford tract. (Many of those standards are discussed below.) ▪ The construction standards will be consistent with the Eastern Band's need to develop educational facilities and support infrastructure adequate for current and future generations and will otherwise minimize or mitigate any adverse impacts on natural or cultural resources. ▪ The construction standards will be based on recognized best practices for environmental sustainability and will be reviewed periodically and revised as necessary. All development on the Ravensford tract will be conducted in a manner consistent with the agreed construction standards. ▪ Development of the tract will be limited to a road and utility corridor, an educational campus, and the infrastructure necessary to support such development.
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	<ul style="list-style-type: none"> ▪ No new structures will be constructed on the part of the Ravensford tract depicted as the “No New Construction” area north of the point where Big Cove Road crosses the Raven Fork River. ▪ Gaming will be prohibited on the Ravensford tract. ▪ The exchange boundary has been reduced from the 168 acres originally identified to approximately 143 acres. This reduction will (1) exclude most of the montane alluvial forest from the exchange, (2) exclude the large wetland complexes from the exchange, and (3) exclude some significant archaeological resources from the exchange.
<p>Cultural Resources</p>	<p>EBCI has agreed, subject to ongoing review and discussion by the consulting parties in the Section 106 consultation process, that:</p> <ul style="list-style-type: none"> ▪ The 12 archaeology sites in the “No New Construction” area of Map No. 133/80020A will be preserved in place as part of the Oconaluftee Archaeology District. Preservation plans for these sites will be developed by the NPS/THPO/SHPO archaeology team and incorporated into the Section 106 MOA. EBCI has proposed joint management by NPS and THPO of the archaeological resources. ▪ The National Register documentation for the Oconaluftee Archaeology District will be updated as a result of the extensive work done to date. ▪ A data recovery plan will be developed by the NPS/THPO/SHPO archaeology team for the 2 sites that are within the construction zone. That plan will be phased in based on the construction phases. It will be incorporated in the final Section 106 MOA. ▪ EBCI has requested that Cherokee schools and students be involved in appropriate educational opportunities related to cultural and archaeological resources in the Oconaluftee Archaeology District, because those resources reflect a part of Cherokee regional history.
<p>Architectural and Environmental Design Features</p>	<p>Based on recommendations from the Blue Ridge Parkway and others, EBCI has agreed:</p> <ul style="list-style-type: none"> ▪ To design buildings with multiple horizontal and vertical profiles, scattered as much as possible, give acreage constraints, within the forest area to blend into the environment. The colors of the buildings will remain subdued, including the colors of gray granite, light grays of bleached wood, and light tan or brown colors of brick.

	<ul style="list-style-type: none"> ▪ Roofs will be constructed in gable, shed, or hip roof styles avoiding flat rooflines with built up roofing. Shingles will be cedar shake, asphalt or fiberglass cut shingles chosen in natural colors to resemble cedar shake. Glaring metal roofing in bright colors will be avoided. ▪ Windows will be tinted to avoid glare, and window frames and door frames will have subdued colors like the building exterior wall color. ▪ Broad sweeps of wall color will be broken up with mottled color schemes of natural stone or broken patters of varying colored brick. Building walls may be incorporated into landform berms planted with evergreen shrubbery such as rhododendron and laurel, to camouflage large massive wall areas. ▪ We have reduced the building footprint area and concentrated proposed development within the Ravensford site to the optimal location as reflected in the most recent site plans, which will maximize landform and forest screening from Parkway overlooks. ▪ We have used computer simulations showing the scale, massing and locations of the school buildings to maximize visual absorption and minimize their visual intrusions as viewed from the Oconaluftee and Raven Fork Overlooks. The schools will not be visible from Raven Fork Overlook at all and will have reduced impact (generally filtered, winter views) from the Oconaluftee Overlook. Buildings will be designed as much as possible with the shortest ends facing the Oconaluftee Overlook.
<p>Visual Resources</p>	<p>Based on recommendations from the Blue Ridge Parkway and others, EBCI has agreed to incorporate these mitigation measures:</p> <ul style="list-style-type: none"> ▪ See architectural features above. ▪ EBCI has offered, if NPS chooses, to develop a revised landscape design at the Oconaluftee Overlook that will assist in focusing visitor views away from the school complex. ▪ EBCI has agreed to minimize tree clearing and add tree plantings in masses, containing both evergreen and deciduous trees, positioned to screen views from the Parkway. Plantings will use native trees, including white pine, hemlock, red spruce, oak, tulip poplar, hickory, and/or maple. ▪ We have also agreed to avoid clearing activities during the migratory bird breeding season in late Spring.

	<ul style="list-style-type: none">▪ Natural vegetative storm water control methods will be used instead of riprap or hardscape drainage control, in addition to water retention cisterns that can be used for landscape water needs within the school complex. Bioswales will be incorporated into the south end of the site and will be planted with native grasses, wildflowers, and ground covers to create a native wet meadow from the current mowed hay field.▪ Parking areas on the site will be limited. Buses will not be parked on the site. Parking areas will be broken up to provide for linear planting islands 10 or 15 feet wide so that larger evergreens can be planted in them. Parking areas may be graded to provide view screening landform berms planted with trees. Parking areas will be constructed from materials designed to camouflage appearance.▪ Big Cove Road will be relocated along the forest edge on the west side of the development area to maximize visual absorption.▪ EBCI will work with the power company and NPS to try to relocate the power lines currently crossing the Parkway (requiring a power line cut) and passing directly through the wetland complex to a new location parallel to the relocated Big Cove Road and the forest edge. Where economically feasible, electrical lines will be relocated underground.▪ Athletic fields will be located in the open fields. Wherever possible bleachers will face away from the Parkway and be screened with mass tree plantings. The track will be faced with subdued greens or tans to blend with the surrounding grass as much as possible.▪ If test wells demonstrate feasibility, the complex will utilize geothermal resources to minimize the need for external mechanical equipment. If chillers or other external equipment must be used, they will not be located on roof tops, but will be ground units well hidden from view by landform design, fences, and/or massed screen plantings.▪ Night lighting will be limited and designed to be obscured from view of the Parkway as much as possible. Light pollution conservation lighting will be used along walks and parking areas. Night lighting within the buildings will be designed to provide security while minimizing visual impact.▪ Athletic field lights will be designed to minimize impact on the Parkway overlooks. They will be illuminated only during home football games, currently estimated not to exceed six to eight evenings per year, some of which are in the late Fall when the Parkway is often closed for weather.
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	<ul style="list-style-type: none"> ▪ (EBCI has also requested that NPS take action to reduce the existing light pollution from the Job Corps Center and Park facilities.)
Wetland Restoration	<p>Reduction of requested acreage from 168 to 144 acres has removed the larger wetland complexes from the exchange. To the extent that small channels remaining within the exchange boundary may be impacted by construction, EBCI will mitigate by expansion of the NPS wetland area through some or all of the methods described below.</p> <ul style="list-style-type: none"> ▪ Beyond any required mitigation efforts, EBCI has offered, if NPS chooses, to plan for and assist with restoration of the existing disturbed wetland in areas outside the exchange boundary as a cooperative project with the Cherokee school system. Such work could include: <ul style="list-style-type: none"> ○ Enhancement of native plantings to preserve bird habitat. ○ Small retention structures to increase water levels in wetland and thereby reduce non-wetland and non-native invasive plant species currently prevalent there. ○ Small scale earthwork to create more sinuous channels to increase water levels. ▪ The storm water retention bioswales will also result in creation of a new wet meadow that should increase the overall size and quality of the current wetlands. ▪ The exchange will result in increased wetland buffer and the addition of approximately seven acres of high altitude wetland seeps at the Yellow Face site near Waterrock Knob.
Noise levels	<ul style="list-style-type: none"> ▪ If test wells demonstrate feasibility, the complex will utilize geothermal resources to minimize the need for noise generating external mechanical equipment. ▪ There will be no external PA system (except during occasional home football games). ▪ Ball fields and playground areas will be fenced and/or planted to improve noise absorption. ▪ Relocation of Big Cove Road and reduced speed limit may reduce current traffic noise (from high speed tire whine) on Big Cove Road.

Mr. GIBBONS. Thank you, Mr. Jones.

Mr. Blankenship, do you have any comments? Please pull the mike close to you so everyone can hear.

**STATEMENT OF CORY MATTHEW BLANKENSHIP,
EASTERN BAND OF CHEROKEE INDIANS**

Mr. BLANKENSHIP. Chairman Pombo, Ranking Member Kildee, members of the Resources Committee, and other Members of Congress, I, too, would like to express my thanks for being allowed to address the Committee this morning.

I am an enrolled member of the Eastern Band of Cherokee Indians and a student at Cherokee High School. I started my academic career at Cherokee Elementary School and graduated from Cherokee High School last month. Next year I will attend North Carolina State University, and when I finish my education, I will return to my home, my family, and my people. God willing, I will raise my own children in the community 1 day. As a student at Cherokee schools for nearly 13 years, I have seen firsthand the dangerous and dilapidated conditions that exist in our school system.

As Chief Jones has already mentioned, education is extremely important to the Eastern Band. We strive for excellence in our schools, take pride in our traditions, language, and history, and we want our children to have the schools they need and deserve. We only want the best for our children. Our children need a safe, ample school facility that is more conducive to learning—something we do not have now.

We currently have over 700 students enrolled at Cherokee Elementary School, all of which are housing in a facility built for 480. Over 35 percent of our elementary school students are classified as “un-housed” students because they attend classes in modular units that have been set up on campus. This number comes from the Southern Association of Colleges and Schools which accredits the Cherokee Central School System. Also, according to the Southern Association of Colleges and Schools, our elementary school campus should sit on 17 or more acres of land. The elementary school currently sits on nine. This small campus is located at the busy intersection of U.S. Highways 19 and 441, where millions of visitors to the Great Smoky Mountains National Park pass each year.

Not only are the elementary school buildings overcrowded, they have seen the effects of time. The foundation has shifted, causing walls floors, and ceilings to crack, allowing for the formation of rust and mold. In some places, ceiling tiles have disintegrated to nothing, exposing electrical corridors and other utilities. Our gymnasium has been condemned for structural reasons, but we have to continue using it.

Cherokee High School has similar problems. The school is currently at capacity. Parts of the building have been declared unfit for educational purposes, and parts of the structure have been condemned. These school facilities are simply inadequate for the education of our children.

But we have the resources and Congress has the power to solve this problem. With Congress’ approval of this exchange, the Eastern Band will have a suitable location in which to build three new schools, all part of one multi-generational educational village.

We envision a cultural village where our children can gain an understanding of our culture, heritage, language, and our history. They will learn traditional ways, customs, language, and natural history alongside the modern curriculum of schools throughout the Nation. Our children will attend school in modern, environmentally friendly facilities in an area that is part of our ancestral homeland, close to our homes, and more conducive to learning.

We are a close-knit community and our clan and extended family relationships are important. Our language is also important to pre-

serve that culture. In this educational village, Cherokee language teachers and elder speakers will be able to move from students in one school to the next. And older students will be able to assist in the education of younger ones.

Our ideal teaching method is language immersion, and it has been introduced into the school system, but cannot reach its full potential in isolated schools. The basis of immersion is that students hear and speak nothing but Cherokee for hours each day. They speak with and teach each other and, therefore, truly absorb our native language. This new three-school campus will allow us to expand the immersion program and increase the fluency and numbers of native language speakers. This new facility will also allow many Cherokee students who have entered the public school system because of poor conditions and overcrowding in our schools to return. These public school students currently receive virtually no exposure to our language and culture while at school.

This large parcel of land will also rejoin the isolated Cherokee community of Big Cove with the rest of the Qualla Boundary. Restoring jurisdictional integrity of our land will serve not only as a physical connection but also as a spiritual one that will allow the coming together of communities of people and of traditional ways.

In the last decade, over 3.5 million acres nationwide have been placed under the protection of the National Park Service, and we ask only for 143. If this exchange takes place, there will still be more acres under Park Service protection, with the 218 we are offering at Waterrock Knob. We believe this exchange is fair and that our goals are important, and we hope you do, too.

We ask everyone here today to support the Cherokee people, help us protect our unique identity, help us to ensure the future of our children and our nation as a whole. Please support the Ravensford land exchange and do not allow our Cherokee children to be left behind.

Thank you again for allowing me the honor to appear before you.
[The prepared statement of Mr. Blankenship follows:]

Statement of Cory Blankenship, Eastern Band of Cherokee Indians

Chairman Pombo, Ranking Member Rahall, Members of the Resources Committee and other members of Congress, I too would like to express my thanks for being allowed to address this Committee today.

I am an enrolled member of the Eastern Band of Cherokee Indians, and a student at Cherokee High School. I started my academic career at Cherokee Elementary School, and I graduated from Cherokee High School last month. Next year I will attend North Carolina State University, and when I finish my education, I plan to return to my home, my family, and my people. God willing, I will raise my own children in the community one day. As a student at Cherokee Schools for nearly 13 years, I have seen first hand the dangerous and dilapidated conditions in our school system.

As Chief Jones has already mentioned, education is extremely important to the Eastern Band. We strive for excellence in our schools, take pride in our traditions, language, and history—and we want our children to have schools they need and deserve. We only want the best for our children. Our children need a safe, ample school facility that is more conducive to learning, something we do not have now.

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We envision a "cultural village" where our children can gain an understanding of our culture, heritage, language and our history. They will learn traditional ways, customs, language, and natural history alongside the modern curriculum of schools throughout the Nation. Our children will attend school in modern, environmentally friendly facilities in an area that is part of their ancestral homeland, close to our homes and more conducive to learning.

We are a close-knit community and our clan and extended family relationships are important. Our language is also important to preserve that culture. In this educational village, Cherokee language teachers and elder speakers will be able to move from students in one school to the next. And older students will be able to assist with the education of the younger ones.

Our ideal teaching method of "language immersion" has been introduced in the school system, but cannot reach its full potential in isolated schools. The basis of immersion is that students hear and speak nothing but Cherokee for hours each day, speak with and teach each other, and therefore truly absorb their native language. This new three-school campus will allow us to expand the immersion program and increase the fluency and numbers of native language speakers. This new facility will also allow many Cherokee students—who have entered the public school system because of poor conditions and overcrowding in our schools—to return. These public school students currently receive virtually no exposure to our language and culture at school.

Our "educational village" will be on a large parcel of land, in a safe location buffered from major highways. It will be a beautiful facility designed with nature. We will be able to look out on the mountains and forests that we are a part of, and that are a part of us. Natural study areas in the forest will surround this campus, where our children will learn the scientific and biological make-up of our ancestral homeland.

This large parcel of land will also rejoin the isolated Cherokee community of Big Cove with the rest of the Qualla Boundary. Restoring jurisdictional integrity of our land will serve not only as a physical connection, but also as a spiritual one that will allow the coming together of communities, of people and of traditional ways.

In the last decade, over 3,500,000 acres nationwide have been placed under the protection of the National Park Service. We are asking only for 143 acres to help us build our schools and preserve our culture. And when this land exchange is completed there will still be more acres under Park Service protection, with the 218 we are offering at Waterrock Knob. We believe this is a fair exchange and that our goals are important, and we hope you do too.

We ask everyone here today to support the Cherokee people, help us protect our unique identity, help us insure the future of our children and our Nation as a whole. Please support the Ravensford Land Exchange, and do not allow our children to be left behind. Thank you again for allowing me the honor to appear before you.

Cherokee Cultural Education Center at Ravensford

The Eastern Band seeks to develop a three-school elementary, middle and high school campus on the Ravensford land exchange site, presently located in the Great Smoky Mountains National Park. At scoping meetings held to prepare for the draft environmental impact statement regarding the land exchange, members of the Eastern Band of Cherokee explained their cultural and educational reasons for planning a three-school campus, and this briefing paper is intended to consolidate and summarize those reasons in a single document.

It is important to note that the Eastern Band has requested the Ravensford site both for school construction and to reunite the Big Cove Community with the rest of the Qualla Boundary (Cherokee Indian Reservation). Big Cove is completely separated from the Boundary by National Park Service land, and the access road to Big Cove travels for about two miles through the National Park. Even if other land were available for the school campus, the Eastern Band would seek the Ravensford site to re-establish territorial integrity with Big Cove.

Cultural Background

The Eastern Band of Cherokee are the descendants of the Cherokee Nation who refused to relocate to Oklahoma, or who returned from Oklahoma after the Trail of Tears in the 1830s. The Tribe struggled for decades to reacquire and preserve a tiny portion of its original land base. The community is a close-knit one, formed by common ancestry and the struggle for cultural preservation on its original land base. Cherokee culture is clan-based. Extended family plays a much more significant role in Cherokee culture than it does in most non-Indian cultures.

Traditional Cherokee cultural norms are also based on a reverence for nature and natural life cycles. Along with ceremonial practices conducted in the rivers and mountains, the practice of gathering wild foods and natural medicinal herbs is still widely practiced. The natural environment of the Western North Carolina mountains has sustained the Band for many years, and preservation of that environment is important to Tribal members.

At the same time, the Eastern Band of Cherokee has embraced many elements of non-Indian culture, and has developed a thriving economy based on tourism. Although not without challenges, the Qualla Boundary probably has the most developed economy on a per capita basis of any Indian Nation. The modern economy has had an impact on Cherokee culture, particularly by affecting the number Cherokee language speakers.

Anthropologists recognize the importance of a distinct language as perhaps the key element for preservation of traditional cultures. In this regard, the Eastern Band is at a critical juncture. While there are still many fluent Cherokee speakers, and a smaller number who can read and write in Cherokee, many adults and children do not speak Cherokee fluently, and some know only a few words.

The Eastern Band and other Indian Nations face many challenges in the modern world. Among other things, diabetes is epidemic among many Tribes including the Eastern Band. Recent research has indicated that cultural knowledge and self-esteem are key prevention factors in helping today's youth combat this spreading disease. Maintaining the Tribe's language and culture may indeed be a matter of life or death in the future.

To combat this trend and reverse it, the Eastern Band has established a program to teach Cherokee language and culture in the elementary school, in addition to the regular academic curriculum. The program has been successful, but is difficult to implement in the outdated, dilapidated, and overcrowded elementary school, located at a busy downtown intersection. Some of the serious challenges faced in the current setting are summarized in the attached memorandum by Lee Clauss of the Tribal Historic Preservation Program. The Tribe wants to expand the language program to the high school level, but with limited numbers of fluent Cherokee speakers who also have teaching credentials and geographically separated schools, that is not possible at this time.

Cherokee Cultural Education Center

The Eastern Band proposes a unique educational center, designed with a strong emphasis on nature, and in keeping with the traditions of the Cherokee culture. This three-school campus will include elementary, middle, and high schools in state-of-the-art facilities built to teach both the regular curriculum and Cherokee language and culture. The high school will include classrooms and meeting rooms for post-secondary education and for adult continuing education, making the facility a multigenerational cultural education center.

The Center's buildings will include elements of the traditional Cherokee seven-sided council houses and other references to the seven Cherokee clans. The written and spoken Cherokee language will be prevalent throughout the Center. Cherokee language teachers and traditional tribal elders will be able to circulate through the schools, helping classroom teachers incorporate language and culture into the classroom. The Center will facilitate mentoring programs, pairing older and younger students in collaborative teaching and learning experiences.

Opponents of the land exchange have argued that the schools should be separated to comply with current non-Indian education theory. Even if that is current theory, the Tribe's need to preserve its language and culture is paramount. Without

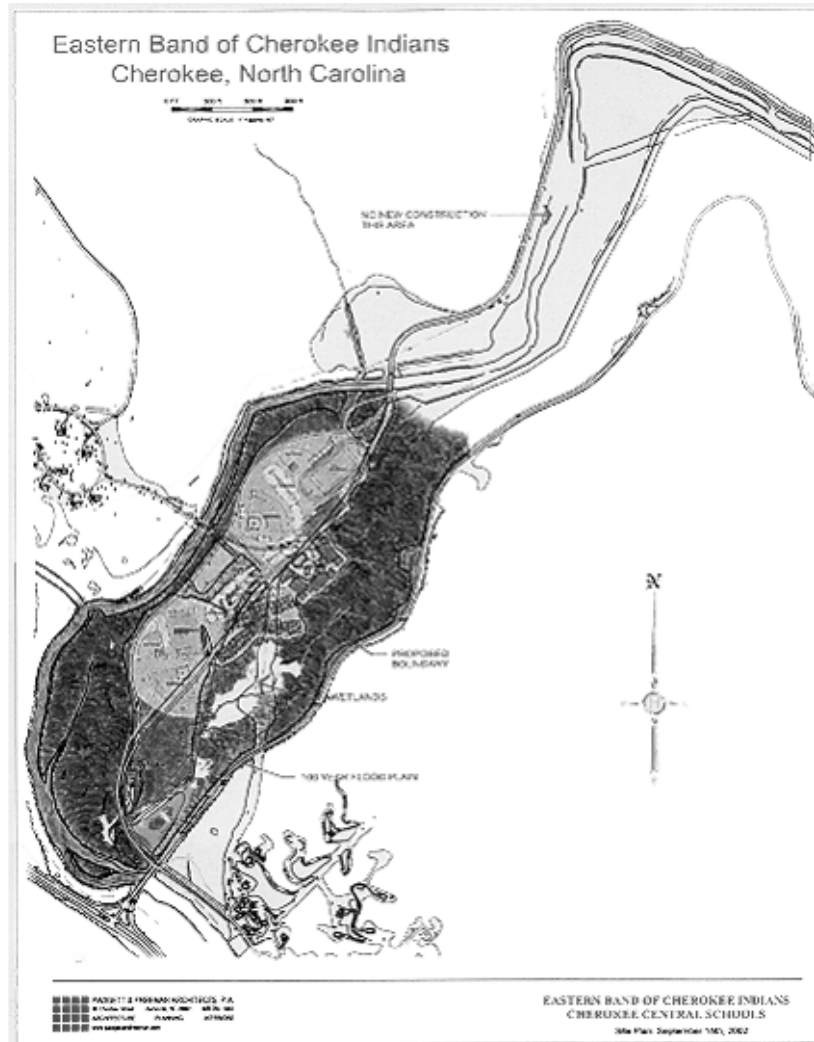
intending any disrespect, we have struggled for years in schools that were designed by the Federal government based on the mainstream education theories of the time. We are ready to design and build our own education center.

Consistent with Cherokee respect for nature and the mountains, the Eastern Band plans outdoor learning settings as well, so that students can remain connected with and learn more about the environment as they are being educated. The Ravensford site offers several opportunities that are not available elsewhere, with the adjacent wetland, riverine, and montane alluvial habitats. Ravensford also contains significant historic and prehistoric Cherokee archeological features, which could offer educational opportunities whether they are preserved in place or excavated by professional archeologists working with the schools and community.

The challenge of designing our own Education Center in a way that fits with the natural setting and does not interfere with the experience of Park visitors is one that the Tribe is happy to accept. Like the developers of the Folk Art Center on the Blue Ridge Parkway in Asheville, the Eastern Band will work closely with Park Service planners and officials to ensure that the schools fit the site, minimize any impact on views and other resources, and blend into the environment. This is not just something we want to do for the environment. We believe that replacing the current aging and substandard facilities that we inherited from the Bureau of Indian Affairs with beautiful schools in a natural setting will greatly enhance the self-esteem and educational experience of Cherokee children.

The consolidated Education Center will also promote other efficiencies, including the ability to maintain the buildings and grounds, full use of school libraries on a multigenerational basis, use of athletic facilities, more efficient bus service, providing on-site specialists, including counselors, health educators, special education teachers, agricultural, environmental, and archeological educators, as well as the cultural and language specialists.

We want to teach our children from the standpoint of history, nature, culture and community. The Cherokee Cultural Education Center, located in the heart of the Qualla Boundary at Ravensford, will be the central core that draws the community together and maintains the cohesive nature of our clan- and family-based society. The Education Center is needed, both literally and spiritually, to “bring us together.” It is not just our preference—it is a cultural necessity.



The CHAIRMAN. [Presiding.] Thank you.
Mr. Barger?

STATEMENT OF DON BARGER, SENIOR REGIONAL DISTRICT REPRESENTATIVE, NATIONAL PARKS CONSERVATION ASSOCIATION

Mr. BARGER. Mr. Chairman and members of the Committee, good morning. I appreciate the opportunity to present the views of the National Parks Conservation Association on H.R. 1409. We have submitted a written statement that I will summarize.

I want to be very clear from the outset. The problems are real and NPCA completely supports and applauds the Eastern Band's commitment to provide their students with the best possible

schools. At the same time, NPCA must oppose H.R. 1409 at this time. Our position has not been lightly considered nor easily reached.

NPCA has been joined in opposing the development of this site by the Governor-appointed National Park Advisory Councils of both North Carolina and Tennessee. Appointed by former Governors Don Sundquist and Jim Hunt, both commissions passed resolutions in opposition to the proposed exchange, and we have attached that to our written testimony.

For over 2 years, the Park Service has studied the potential effects of the proposed exchange. The draft Environmental Impact Statement, or EIS, has just become available, and there has been no opportunity to review or comment on it. Consequently, NPCA believes that H.R. 1409 is premature as it would short-circuit the ongoing public process and require the land exchange and development to proceed before the impacts of the proposal have been fully discussed or understood.

I would like to raise just a few of the kind of issues that the EIS will unravel over the next few months.

The site is listed on the National Register of Historic Places due to its over 8,000-year archaeological record of Euro-American, Cherokee, and pre-Cherokee history. Scientists from the All Taxa Biodiversity Inventory have identified to date 59 species new to science within the area. The Park Service's visual analysis of the site from the two overlooks along the Blue Ridge Parkway that look down upon the valley states, and I quote, "Parkway visitors consider the Raven Fork River Valley view among the most coveted, a rare icon view."

Two descending ridges currently separate the noise, lights, and congestion of Cherokee from the Oconaluftee Valley in the park. If the Ravensford tract is developed as this bill proposes, the valley and the grandstand of mountains around it will be impacted by three buildings, six athletic fields, including some lit for night games, and several parking lots. We would oppose the development of this site even if the Park Service had proposed it.

In relation to the Big Cove Road, the Park Service has worked with the Eastern Band over the years, and to our knowledge, no problems have been identified with either services or access along the road. We have been told that the two tracts of land proposed for exchange have relatively equal values of around half a million dollars. In 1972, the Park Service's regional real estate appraiser determined the fair market value of the Ravensford tract to be \$6,000 per acre. If you apply an extremely conservative 3-percent annual increase to that value, the Ravensford tract should be worth around \$2 million. At the same time, we visited the Jackson County property assessor's office in May and found that the appraisal for the Yellow Face tract was \$58,400. While these appraisals are usually on the low side, it would be quite unusual for them to be so by a factor of 10.

These and many other issues and questions will be vetted in the public participation process for the EIS. We believe that forum is the proper one for understanding and fully evaluating these issues.

It is important to emphasize that we believe that there are alternative locations for the new schools that could be developed and

used. According to the Cherokee Business District Master Plan of February 2001, and I will quote, "With a large amount of flat to rolling land, opportunities exist for development of large facilities such as a shopping area or hotel as well as a public parking facility."

The master plan also states, "The elementary school occupies one of the most prime parcels of real estate in Cherokee, as does the BIA office next door...Over the long term, the elementary school and BIA sites should become a new cohesive anchor attraction. These anchors could be an outlet mall, festive retail, or entertainment uses that draw visitors to their locations as destination attractions."

Mr. Chairman, even a poorly done Education Campus Site Evaluation with hand-picked criteria that assured the Ravensford tract would be identified, found potential alternative sites for the construction of schools. The study does not conclude that the Ravensford tract is the only potential site for school construction.

In closing, this is not a case of schools versus scenery. The simplest reason for not removing the land from the park is that we don't need to. NPCA stands ready to work with the Eastern Band, the Resources Committee, the National Park Service and the BIA to devise a solution that both protects Great Smoky Mountains National Park and the Blue Ridge Parkway, and provides Cherokee children with the best possible educational opportunities. We believe both of these goals can be satisfied. Unfortunately, the legislation before you does not produce that solution.

Thank you for the opportunity to testify. I would be pleased to respond to any questions.

[The prepared statement of Mr. Barger follows:]

**Statement of Don Barger, Senior Director, Southeast Regional Office,
National Parks Conservation Association, on H.R. 1409**

Mr. Chairman and members of the Committee, I am Don Barger, Senior Director of the southeast regional office of the National Parks Conservation Association (NPCA). NPCA is America's only private, nonprofit advocacy organization dedicated solely to protecting, preserving, and enhancing the National Park System. NPCA was founded in 1919 and today has approximately 300,000 members who care deeply about the well being of our national parks.

NPCA appreciates the opportunity to express our views about H.R. 1409, the Eastern Band of Cherokee Indian Land Exchange Act of 2003. This proposed exchange has enormous implications for two of our most visited national park units—Great Smoky Mountains National Park and the Blue Ridge Parkway—and should not be entered into lightly. NPCA, along with others in the environmental community, applauds the Eastern Band of Cherokee Indians' (EBCI) commitment to provide their students with the best possible schools. The proposed Ravensford land exchange is so controversial because it combines two extremely important and emotional public policy issues: protecting our national parks, and providing young people with the best possible schools. Fortunately in this case, both of these important goals can be satisfied because of the presence of alternative locations for schools outside the boundary of our Great Smoky Mountains National Park.

As you know, the National Park Service (NPS) is analyzing a proposal for Great Smoky Mountains National Park to relinquish 144 acres, commonly referred to as the Ravensford tract, to the Eastern Band of Cherokee Indians (EBCI), in exchange for adding a parcel of land to the Blue Ridge Parkway many miles away. The exchange is extremely controversial with many national, regional and state organizations, including the North Carolina National Park, Parkway and Forest Develop-

ment Council and Tennessee Park Commission, expressing their opposition.¹ NPS is developing an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA); a draft EIS is slated for publication this month. Consequently, NPCA believes that H.R. 1409 is premature, as it would short-circuit the ongoing public process and require the land exchange to proceed before the impacts of the proposed land exchange have yet to be fully debated or understood.

Ravensford

The proposed exchange will have far reaching impacts on the integrity of the National Park System and will significantly impair the resources of both Great Smoky Mountains National Park and the Blue Ridge Parkway. The beauty, natural history, and human history of the Ravensford tract make it of great educational value as a natural classroom. Scientists from the All Taxa Biodiversity Inventory have recently identified approximately 59 species that are new to science located within the Ravensford tract. Ravensford is also home to an unbroken archeological record of Euro-American, Cherokee and pre-Cherokee history, including historic and prehistoric artifacts dating back more than 8,000 years. The discovery of these cultural resources supports the site's 1982 placement on the National Register of Historic Places.

Part of the Ravensford tract includes alluvial floodplain, a globally rare ecological community described as imperiled by the Nature Conservancy. Because they're flat and near water, most such areas have been developed over the course of history, making the preservation of Ravensford in an undeveloped state even more important. In fact, the Ravensford tract was flooded during the recent severe rains during the week of May 5, 2003.² The Ravensford tract affords beautiful vistas from the Oconaluftee Valley, with a foreground of open fields from which hills and mountains of Great Smoky Mountains National Park rise abruptly. The topography of the park is such that vistas like these are extremely limited. The recently updated Blue Ridge Parkway (BLRI) visual analysis survey of the Ravensford tract published by the Department of Interior states, "Parkway visitors consider the Raven Fork River Valley view among the most coveted, a rare icon view." Parkway management has concluded that the views to the tract should be preserved.

The ridges of the Great Smoky Mountains form a natural gateway that separate the noise and congestion of the town of Cherokee from the Oconaluftee Valley in the national park. The proposed school complex would sit at the primary North Carolina entrance to the park as well as the southern terminus of the Blue Ridge Parkway. If the Ravensford tract is developed into a school campus, that grandstand of mountains will include night lighting, six athletic fields, three parking areas and traffic congestion, as school buses would have to navigate the principal North Carolina entrance to our nation's most visited national park.

Alternative Locations for School Construction

It is important to emphasize that there are alternative locations for new schools both inside and outside the Cherokee Reservation. Two documents produced by EBCI, the Cherokee Business District Master Plan and Education Campus Site Evaluation, state explicitly that alternative sites are available.

EBCI received the Cherokee Business District Master Plan in February 2001. The stated purpose of the document is to "serve as a guide for the orderly growth and development of Cherokee's CBD [Central Business District]."³ The development of the master plan began with an inventory and analysis of the natural and man-made features and conditions within the reservation. Based on that inventory the master plan states:

Opportunities for commercial developments, parking facilities, and cultural attractions also exist throughout the area. The north end of the CBD is currently experiencing retail growth. With a large amount of flat to rolling land, opportunities exist for development of large facilities such as a shopping area or hotel as well as a public parking facility. (emphasis added).

Another large area of potential development lies across the river where several large buildings stand unused on Acquoni Road. These large flat and paved areas could be used for a number of public or private ventures that do not require direct tourist visibility.⁴ (emphasis added).

The master plan states that the long-term plan includes possible acquisition of alternative sites for schools. The master plan states:

¹ Park Commissions' Resolutions.

² Personal communication with GRSM staff.

³ Cherokee Business District Master Plan, February 2001, pg. 1.1.

⁴ Cherokee Business District Master Plan, February 2001, pg. 4.1.

The elementary school occupies one of the most prime parcels of real estate in Cherokee, as does the BIA office next door. The school and the BIA are not the “highest and best use” of these prime parcels. Over the long term, the elementary school and BIA sites should become a new, cohesive anchor attraction. . . . These anchors could be an outlet mall, festive retail, or entertainment uses that draw visitors to their locations as destination attractions. The size of these parcels makes it possible to develop them cohesively, which is of primary importance in the development of an anchor destination.⁵ (emphasis added).

Even the poorly done Education Campus Site Evaluation, with EBCI’s hand-picked criteria that assured the Ravensford tract would be identified, found potential alternative sites for the construction of schools. The study included a number of limiting criteria, including:

Commuting distance for students (maximum 15-mile bus commute for all students on the Qualla Boundary).⁶

- Topography and soils analysis, based on a threshold of 8 degrees slope and less.⁷

A map showing low-slope land in and around the Qualla Boundary indicates large tracts of land with slope of no more than 8% within a ten-mile radius of the Ravensford tract.

EBCI have identified a need for 73 acres to accommodate a three-school complex with necessary parking and athletic facilities. The Education Campus Site Evaluation identifies 10 potential sites for school construction.

Following the site selection process, each site was evaluated based on a more detailed examination under the technical criteria. A lower ranking score of “4” was provided to sites that, among other factors, have “wetland and/or flood issues adversely impact full use.”⁸ The study also states that it is important to note that many of the tracts are “located outside reservation boundaries and are comprised of individual tracts with multiple owners” concluding that these sites “will prove difficult, if not impossible, to acquire.”⁹ The study neglects to point out that the Ravensford tract is among those sites outside the reservation boundary.

The Ravensford tract is outside the reservation boundary, within the Great Smoky Mountains National Park, and as parkland is owned by and for the enjoyment of every American, including the Cherokee. The tract includes approximately 7 acres of wetland.¹⁰ As stated earlier in the testimony, the Ravensford tract was flooded during the recent severe rains during the week of May 5, 2003.¹¹ Nonetheless, the Ravensford tract was determined to be the “best suited to accommodate a consolidated school campus.”¹² The study does not conclude that the Ravensford tract is the only potential site for school construction. Also, the study neglects to consider the current locations of the schools as suitable locations for schools.

In a letter from NPS Director Roger Kennedy to Senator Jesse Helms, dated June 13, 1994 Mr. Kennedy noted that construction of either a golf course or school complex “would be totally contrary to the purpose for which the land was placed within the park, i.e., to preserve its scenic, natural and cultural resources.” The letter continues:

Construction of a school complex along with the attendant parking, athletic field and 2 other facilities would require extensive clearing, grading and construction in an area where native grasses and forests now exist. The resultant disturbance would be totally incompatible with the archeological district and historic appearance now protected by national park status.

Visually, the proposed school complex would have a dramatic impact on the view from the last two overlooks on the Blue Ridge Parkway which currently provide unimpaired vistas of the pastoral Oconaluftee River valley and the Oconaluftee Pioneer Farmstead which is part of the park’s Oconaluftee Visitor Center Complex.

⁵ Cherokee Business District Master Plan, February 2001, pg. 5.20.

⁶ Education Campus Site Evaluation, Joel L. Starrow, P.E., Dale E. Pennell, P.E., P.L.S., McGill Associates, October, 2002, p. 4.

⁷ Education Campus Site Evaluation, p. 5.

⁸ Education Campus Site Evaluation, p. 11.

⁹ Education Campus Site Evaluation, p. 12.

¹⁰ Draft Statement of Findings for Wetlands for a Proposed Land Exchange between the National Park Service and the Eastern Band of Cherokee Indians at the Great Smoky Mountains National Park/Draft Land Exchange EIS, pg. 12.

¹¹ Personal communication with GRSM staff.

¹² Education Campus Site Evaluation, p. 13.

Finally, the National Park Service is concerned that carving into the park for this project would lead to proposals for development in the park by other entrance communities, all of which are nearing the limits of the developable land. A few years ago, for example, Gatlinburg, Tennessee, requested permission to build flood control facilities inside the park's northern entrance. This request was rejected as well.¹³

NPS published another GRSM Briefing Statement regarding the EBCI requests for special park use of land for development on January 20, 1998. The Briefing Statement includes the NPS official position; "The National Park Service continues to oppose cutting into the Park to construct facilities such as the golf course or school complex which are not compatible with Park purposes."¹⁴

On June 14, 2000 NPS broke with their long-standing policy of rejecting EBCI's request for land within GRSM. Robert Stanton, former Director of NPS, entered into an agreement with the EBCI, to "create a framework within which the parties may explore the feasibility of a land exchange involving the Ravensford tract." The agreement includes a list of steps to be taken by both NPS and EBCI to determine whether it is feasible to exchange the land. One of the NPS action items listed in the agreement reads as follows:

5. Make final determination in good faith, after the completion of the required surveys and studies, to enter into the proposed land exchange or not to enter into the proposed land exchange.¹⁵ (emphasis added)

Thus the agreement does not contain a guarantee that the exchange would take place.

History of the Ravensford Tract

The Ravensford tract was part of the land ceded by the Cherokees at the Treaty of Tellico in 1798.¹⁶ Euro-American settlers had begun to enter the area at that time and by the early 1800s the Ravensford tract and surrounding area was settled by the Mingus, Enloe and Hughes families.¹⁷ Descendants of these three families continued to control the private holdings in the area into the 1920s.¹⁸

During that period leading up to the creation of the Great Smoky Mountains National Park (GRSM) in 1934, the states of Tennessee and North Carolina bought the land in preparation for turning it over to the Federal government. Timber interests owned and were harvesting the vast majority of the land that became GRSM. Such was the case with the Ravensford tract. The Whitimer-Parsons Pulp & Lumber Company had purchased the land that was to become the lumber town of Ravensford in the early 1900s.¹⁹ The land in turn was acquired by condemnation from the lumber company by the State of North Carolina in 1933 and subsequently became part of the national park. Following the establishment of GRSM the Federal government began the process of developing the Blue Ridge Parkway, an ambitious vision for a unit of the park system to connect Shenandoah National Park in northern Virginia to the Great Smoky Mountains National Park in North Carolina.

The Blue Ridge Parkway Negotiations (1937—1940)

In 1937 the Cherokee declined an offer by NPS for the Ravensford tract as well as the Boundary Tree tract, Tight Run tract and cash in exchange for right-of-way across the Qualla Boundary to be used for the preferred, westward route for the Blue Ridge Parkway down from Soco Gap. The Cherokee's refusal of that offer set into motion a complex set of negotiations that eventually led to acceptance of an offer for cash and the construction of U.S. Highway 19 in exchange of right-of-way for the current eastward route of the Parkway.

One of the key issues faced by Parkway planners was acquiring right-of-way through the Qualla Boundary to GRSM to construct the southern terminus of the road. Negotiations began between the Federal government, North Carolina and

¹³ NPS letter dated June 13, 1994. To Senator Jesse Helms, from Director NPS.

¹⁴ NPS GRSM Briefing Statement re. Eastern Band of Cherokee Requests for Special Park Use of Land for Development, dated January 20, 1998.

¹⁵ General Agreement (Agreement No. GA-GRSM-01-FY00) Between National Park Service and Eastern Band of Cherokee Indians, June 14, 2000.

¹⁶ Paul A. Webb, et al., Cultural and Historical Resources Investigations of the Ravensford Land Exchange Tract, Great Smoky Mountains National Park, Swain County, North Carolina (ARPA Permit GRSM 99-001, Amendment 1 SEAC Accession No. 1580, June 2002), 37.

¹⁷ Webb, Cultural and Historical Resources Investigations, 38.

¹⁸ Webb, Cultural and Historical Resources Investigations, 38.

¹⁹ Margaret Lynn Brown, *The Wild East: A Biography of the Great Smoky Mountains* (University Press of Florida, 2000), 52.

EBCI with the original plan to route the Parkway through Soco Gap west along Soco Creek down into the town of Cherokee.²⁰ When the Cherokee discovered that NPS wanted a one-thousand-foot right-of-way and that the road would be for restricted use, the EBCI opposed the project.²¹ The Cherokee were concerned that the wider right-of-way would take valuable farmland in the Soco Valley and negatively impact commercial possibilities on the main street in Cherokee.²²

Negotiations for the preferred Blue Ridge Parkway route along Soco Creek evolved with the Secretary of Interior offering the following exchange of park land for EBCI land: the EBCI would receive the Ravensford, Boundary Tree, and Tight Run tracts (all within GRSM) plus reasonable cash compensation; the NPS would receive the 1,102 acre Towstring tract and a right-of-way for the Parkway through the Qualla Boundary from Soco Gap west along Soco Creek.²³ This exchange was explicitly made contingent upon consent of EBCI through a secret ballot in a general election within sixty days of the bill's passage.²⁴ The bill was approved by Congress on August 19, 1937.

This proposal was clearly controversial among the Cherokee as reflected in an article from the *Sylva Herald* dated September 9, 1937. The headline read "Council Vote Reflects Opposition to Soco Route." According to the article, a general election resulted in an EBCI Tribal Council consisting of eight opponents of the exchange plan and four proponents of the plan. The *Sylva Herald* reported on October 14, 1937 under the headline "Indians Will Not Vote on Parkway," that the new council had chosen to adjourn without voting on the Parkway plan. Thus the offer of the Ravensford tract was rejected by EBCI in 1937.

Secretary of the Interior Ickes was thus caught between his attempts to procure a suitable route for the Blue Ridge Parkway and his obligation to protect the interests of the Cherokee. He composed a letter to the EBCI in which he plainly stated that DOI would not coerce the Cherokee into providing the right-of-way: "If you do not want the road to be built where the National Park Service desires it to go, it will not be built." The Cherokee were advised that if they did not approve of the current proposals for the Parkway, either a new route avoiding the reservation would have to be found or else the road would have to terminate at Soco Gap.²⁵

The State of North Carolina, working through EBCI Principal Chief Jarret Blythe and the Superintendent of the Cherokee Indian Agency, abandoned the original proposal to go down Soco Creek.²⁶ The new plan called for a completely different route eastward from Soco Gap, along the existing ridge-top route of the parkway. Given the complex of cuts, fills and tunnels NPS had realized that with this route it was going to cost significantly more to build the parkway into GRSM. This offer required that the State of North Carolina build a new highway through Soco Gap that would leave EBCI tourist business intact and allow economic expansion. This offer did not include any exchange of parkland. EBCI rejected this proposal.²⁷

Finally, in 1940 Congress passed legislation that would provide NPS with a right-of-way across the Qualla Boundary along the existing route of the Parkway. That route takes the Parkway from Soco Gap along the ridgeline and finally connects with U.S. Highway 441 (Newfound Gap Road) within GRSM immediately adjacent to the Ravensford tract.²⁸ In exchange the State of North Carolina agreed to build a highway from Soco Gap to Cherokee (now U.S. Highway 19), and the Cherokee received \$40,000 or \$30 an acre (whichever amount was greater) for the right-of-way and an option to acquire the Boundary Tree tract.²⁹ EBCI did acquire the Boundary Tree tract in 1943.

Thus the boundaries of the Parkway and GRSM overlap along the southern most mile of the Parkway, with the Parkway passing immediately southeast of the Ravensford tract and running parallel to Big Cove Road. In other words, the Ravensford tract is completely surrounded by GRSM and bounded on the southeast side by the Parkway. The Ravensford tract is situated with both the Parkway and over one-half mile of GRSM land separating it from the Qualla Boundary to the southeast. Removing the tract from the park would create a private in holding almost completely surrounded by national park land.

²⁰ Harley E. Jolley, *Blue Ridge Parkway* (University of Tennessee Press, 1983), 93.

²¹ Jolley, *Blue Ridge Parkway*, 93.

²² John R. Finger, *Cherokee Americans: The Eastern Band of Cherokees in the Twentieth Century* (Lincoln: University of Nebraska Press, 1991), 78.

²³ 75th Congress, 1st Session, H.R. 5472, pg. 699.

²⁴ 75th Congress, H.R. 5472

²⁵ Jolley, *Blue Ridge Parkway*, 97.

²⁶ Jolley, *Blue Ridge Parkway*, 100.

²⁷ John R. Finger, *Cherokee Americans*, 93.

²⁸ 76th Congress, 3d Session, H.R. 6668, pg. 299.

²⁹ 76th Congress, H.R. 6668.

For that reason the route of the Parkway became a significant factor in NPS removing the Ravensford tract from the negotiating table. With the original proposal, the Parkway would have come down the west side of the ridge along Soco Creek, following a path that did not overlap with GRSM. Writing in 1940, GRSM Superintendent J.R. Eakin discussed, in pertinent part, the original rationale for the land exchange in the 1937 offer and how the NPS position had to change with the alternative route of the Blue Ridge Parkway:

I initiated the exchange that was offered to the Indians in 1937. The idea was to get a better administrative boundary for the park and to secure a right-of-way for the Parkway down Soco Creek, where construction costs would have been very much less than the location selected. We offered the Indians a value of about four-to-one, predicated upon the Soco Creek location. The Indians did not accept, and we here considered the matter ended. At the time the exchange was offered the site of the Secondary Administration Building [at Oconaluftee] had not been selected". We are going to have a very fine layout there and I did state to Mr. Zimmerman [Acting

Commissioner of the Indian Service] that in my opinion it would be unwise to complicate the situation by letting the Indians have the Ravensford tract. This is still my opinion and is the opinion of our entire staff. We believe the Parkway location has changed the whole picture.

Mr. Zimmerman appears to be of the opinion that we are withholding something that rightfully belongs to the Indians. The North Carolina Parks Commission purchased the lands under discussion for park purposes.

The present Cherokee entrance is not impressive and we proposed to exchange the Boundary Tree Tract, the northern boundary of which will make a more impressive entrance, unless the present deplorable development along the road in the Reservation continues on the Boundary Tree Tract if acquired by the Indians.

In conclusion, I desire to state that I have made no misleading statements, but on the contrary, Mr. Zimmerman is badly confused.³⁰

Recent History (1970—Present)

Since 1971, leaders of EBCI have periodically approached NPS requesting that up to 200 acres of the Ravensford tract be made available to the tribe. NPS consistently rejected EBCI's request for a land exchange. For many years EBCI requested the land to build an 18-hole golf course. Writing to Noah Powell, Principal Chief EBCI, in 1972 GRSM Superintendent Vincent Ellis explained the NPS position. Ellis pointed to a set of reasons for the denial including:

1. Policies for the administration of natural areas of the National Park System. Moving the developed area into the natural area in effect diminishes the attraction, which brings the visitors here. It would also reduce the perimeter of the Great Smoky Mountains natural and historic area and open the door to further such requests at other entrances to the park. These requests usually originate in response to needs generated by inadequate land use planning adjacent to the park.
2. Visual impact from Blue Ridge Parkway.

Immediately above the proposed golf course area two scenic overlooks have been established on the Blue Ridge Parkway specifically to provide the visitor views of the pastoral scene including the open meadows, the natural river environment, and the Oconaluftee historic farmstead in the background. I do not think that a golf course in this location is compatible with the historic and pastoral scene we are attempting to maintain in the Ravensford–Oconaluftee area.³¹

The Cherokee continued to request the Ravensford tract for a golf course. A memorandum to George Hertzog, Jr., Director NPS, from David Thompson, Director SE Regional Office NPS on November 16, 1972 sets out his recommendation that NPS not support a land exchange with EBCI. Thompson provides a list of reasons for this denial:

The land within the boundaries of the Great Smoky Mountains National Park have been set aside for all the people to use and still preserve the natural, historical and cultural values. Certain of these Ravensford lands are

³⁰Memorandum dated August 8, 1940 from Superintendent J. R. Eakin to Acting Director NPS Demaray.

³¹Letter dated February 22, 1972 from Superintendent Vincent Ellis to the Honorable Noah Powell, Principal Chief.

classified as cultural and historical. Section 106 of the Historic Preservation Act and Executive Order 11593 apply to portions of this land.³²

In reaction to a subsequent EBCI request for the land, NPS requested that the park's historian, Edward Trout, analyze the feasibility of conducting a land exchange involving the Ravensford tract. A memorandum produced by Trout in 1991 explains his determination that NPS cannot conduct the land exchange and includes the following:

It should be noted that the land in question lies within the Oconaluftee Archeological District, which was placed on the National Register of Historic Places on February 19, 1982. It was placed thereon because of the valuable store of Cherokee and pre-Cherokee archeological resources contained within the District.³³

A Great Smoky Mountains National Park Briefing Statement on the Ravensford land exchange followed that memo. NPS's stated position is "The National Park Service strongly opposes cutting into the Park to construct a golf course."³⁴

EBCI established a Harrah's Casino in Cherokee, NC, in the early 1990s. It is assumed that with this revenue stream, EBCI shifted its priority to improving its school system. In 1994, the tribe requested a land transfer for the construction of new schools.

NPS officials have made it clear that no pre-decision on the land exchange has been made. This issue came to the forefront when Yosemite Superintendent David Mihalic chose to retire rather than take the Superintendent position at GRSM. Mihalic spoke to the press explaining that he was getting pressure from NPS officials. Quoted in the Asheville Citizen-Times Mihalic stated:

"I was told that one of the reasons that (Michael) Tollefson (current Smokies superintendent) was being moved was that he hadn't done it (the land swap), and it was my job to get it done," Yosemite Superintendent David Mihalic said Friday. "My charge in going to the Smokies wasn't to go in there and fight that direction."

Mihalic says he also was asked to tackle the controversial North Shore Road—a project the park historically has opposed. He announced this week he would retire Jan. 3 rather than take on the tasks.³⁵

Also quoted in that October 5, 2002 Asheville Citizen-Times article was National Park Service Spokesman David Barna.

National Park Service spokesman David Barna said there has been no "pre-decision" on either the North Shore Road or the Ravensford land swap.

It is our understanding that EBCI have yet to purchase the non-Federal land that is proposed for the land exchange. According to Jackson County, North Carolina records the property is still owned by Jay Schenck of Florida.³⁶ According to Jackson County records the land value is assessed at \$58,400.³⁷ This is in sharp contrast to the NPS appraisal value cited by EBCI in a letter to the editor of the Washington Post that states "The land the Park Service would receive in exchange, the 218-acre Yellow Face site, was appraised at \$590,000."³⁸

Access Between Big Cove and Qualla Boundary

Another of the reasons that EBCI have stated for their request for the Ravensford tract is to reconnect the community of Big Cove with the rest of the Qualla Boundary communities. The mountainous topography in western North Carolina provides a limited number of suitable routes for roads through the area. By the 1960s the road system in and around the Qualla Boundary included the paved Big Cove Road, approximately one mile of which runs through GRSM. NPS has worked with EBCI providing the tribe with the authority to maintain Big Cove Road and providing right-of-way through the park for water, sewer, cable TV and electricity along the Big Cove Road corridor to service the community of Big Cove. EBCI have not articulated any problems with access to Big Cove as a result of the stretch of Big Cove Road that passes through the park.

³²Memorandum dated November 16, 1972. To Director, NPS, from Director Southeast Region.

³³Memorandum dated March 4, 1991. To Chief Resource Management and Science, from Historian, GRSM.

³⁴GRSM Briefing Statement re. Proposed Transfer of Park Lands to Cherokee Indian Reservation, dated March 5, 1991.

³⁵Asheville Citizen-Times, Man turns back on park job and its controversies, October 5, 2002.

³⁶Warranty Deed, Book Number 758, Page 132, Jackson County Register of Deeds. Registered June 25, 1990.

³⁷Real Property Identity Results, Jackson County Maps Department, May 19, 2003.

³⁸The Washington Post, Good for the Cherokee, Good for the Park Service, letter to the editor from Principal Chief Leon Jones, October 21, 2002, pg. A 24.

Conclusion

NPCA stands ready to work with the Resources Committee, the National Park Service and EBCI to devise a solution that both protects Great Smoky Mountains National Park and the Blue Ridge Parkway and provides Cherokee children with the best possible educational opportunities. Both of these goals can be satisfied. Unfortunately, the legislation before you does not produce such a solution.

Thank you for the opportunity to testify about this important issue. I would be pleased to respond to any questions you may have.

The CHAIRMAN. Thank you. Thank the panel for their testimony. As I am sure you are aware, we have a vote that has been called on the House floor. We are going to recess the Committee temporarily to allow the members to go over and vote, and then we will reconvene as soon as the votes are complete. So it will probably be about 25 minutes that we are over there, but we will be back as soon as we can.

I will tell the members that I know a number of you have questions for this panel, so if you can hurry back, it would help in moving this along.

The Committee will stand in recess.

[Recess.]

The CHAIRMAN. I want to thank the panel for their patience.

Chief Jones, what are the plans that the tribe has for the use of this land? We have heard about the building of an educational facility on the land. Are there any other plans that you have or that you envision for the future on this land?

Mr. LEON JONES. There is only one other use that we have discussed, sir, and that is the corridor for transportation back and forth between the Big Cove community, which has been cutoff from the reservation by this piece of property. I have personally told the parties involved that I would sign any document needed to say that this piece of property will be used for educational purposes only, sir, no other use except transportation through to go to the Big Cove area, sir.

The CHAIRMAN. What if at sometimes in the future there is economic activity? I understand that the bill specifically says that there could be no gaming, but what if at sometime in the future there is some other type of economic development that could occur on this land? Would that be a possibility?

Mr. LEON JONES. No, sir. I have expressed that I would sign the document saying that it is to be used for educational purposes only, sir. The Cherokee are honorable people. We will keep our word, sir.

The CHAIRMAN. I want to ask you about the environmental questions that have come up. I don't know if you are familiar with it, but there is a group called the Sierra Club that has come out in opposition to this. They sent out a letter talking about this. Does your tribe have a history of environmental degradation? Do you have a long history of destroying the environment around you?

Mr. LEON JONES. Sir, we have a Cultural and Heritage Department. The employees of this department, some of them have doctor degrees, others have master's degrees. Their specialty is preserving the lands and the archaeological sites, not only on the reservation. They have been called, when they were going to expand the Marine Corps base in South Carolina, that far away, up into Kentucky, for their advice and their counsel on how to preserve cultural and ar-

chaeological sites. No, sir. To answer your question, the answer is no, we do not have a history of doing destruction to the land, but only preserving the land, sir.

The CHAIRMAN. On the culturally significant sites, the archaeological sites, it is my understanding from your answer that you don't have a long history of destroying those sites either?

Mr. LEON JONES. That is correct, sir.

The CHAIRMAN. That is interesting.

Mr. Blankenship, can you tell the Committee what current educational opportunities exist for students on the reservation or nearby the reservation?

Mr. BLANKENSHIP. There is a public school system in the county schools, which some of our students are forced to attend because of the overcrowding and conditions at Cherokee Central Schools, but as far as education goes, Cherokee schools strive for excellence in their school system. We have a number of students with us today who are going off to college to pursue their own academic careers, so the support is there, but the facilities that we have now are not conducive to learning and conducive to supporting these students at the facility.

And also if I may, I would like to make a comment on the land. We, as Cherokee people, have lived off that land for thousands of years, and to say that we go and destroy that land is far from the truth.

The CHAIRMAN. Well, let me ask you then. Do you have any attachment to the land? Do you care about it at all? do you have any history in the area? Have your people been there for a number of years and tried to protect this land?

Mr. BLANKENSHIP. My people have been there for thousands of years and because of our commitment to the United States we were willing to give up that land for the Blue Ridge Parkway to come through, because of our commitment to the United States and being United States citizens. I mean we haven't even been citizens of the United States for a number of years now. To say that we would go and destroy something that is sacred to us, something that we have lived off of for thousands of years, goes against everything that Native American Indians and Cherokee people stand for.

The CHAIRMAN. Does that include the riparian areas along the river, any sites that may be environmentally sensitive?

Mr. BLANKENSHIP. There are currently 14 archaeological sites on the Ravensford tract, 12 of which will not be touched at all. The two that will be disturbed are Cherokee sites and you can be assured that we will take every precaution necessary to observe those remains because those are our people.

The CHAIRMAN. So the two sites that would be disturbed are historically Cherokee sites?

Mr. BLANKENSHIP. Yes, sir.

The CHAIRMAN. And I would assume from your answer that you do have some interest in preserving and protecting those areas?

Mr. BLANKENSHIP. Absolutely. I mean, this serves not only for our tribe as a whole, but also allows our students to be involved in our history and participating in things like archaeological digs and things of that nature. The tribe has committed itself to spend-

ing the money and taking the time to preserve these sites and ensure that none of these remains are lost.

The CHAIRMAN. So it would be part of the educational opportunities?

Mr. BLANKENSHIP. Absolutely.

The CHAIRMAN. Thank you very much.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman. First I would like to ask unanimous consent to submit a document replying to the National Park Conservation Association's testimony from the Eastern Band of Cherokee Nation.

The CHAIRMAN. Excuse me. Who is it from?

Mr. KILDEE. It is from the Eastern Band Cherokee.

The CHAIRMAN. Without objection, it will be included.

[The information referred to follows:]

THE TRUTH ABOUT NPCA'S TESTIMONY

FROM THE EASTERN BAND OF CHEROKEE

JUNE 18, 2003

NPCA makes false claims in its testimony.

Let's examine the facts:

NPCA Myth: If the proposed schools are built, among other things, "school busses would have to navigate the principal North Carolina entrance to our nation's most visited national park."

FACT: Our education center would be built across the river on a road that is physically separated from the main entrance to the Park. There would be no busses navigating that entrance, nor any impact on the views from the Park entrance.

NPCA Myth: There are large parcels of land suitable for school facilities on the Cherokee Reservation.

FACT: It takes more than 70 open acres of land to adequately site the school complex we need. NPCA has identified no such parcel available in or near Cherokee. The sites discussed in the Tribe's Business District Master Plan are not large enough to build the school complex, or even a single school. The one large parcel we have located to the south of the Reservation is not available for us to purchase, despite repeated contacts with the many owners of that land.

NPCA Myth: "The [Ravensford] tract includes approximately 7 acres of wetland."

FACT: We have worked carefully with NPS to exclude all 7 acres of wetland, along with a buffer, from the exchange site. That wetland will remain in NPS ownership and protection. We have offered to help NPS restore this long neglected and disturbed wetland. The Yellow Face Tract also has approximately 7 acres of high elevation wetland seeps that will be preserved under NPS protection upon approval of the land exchange.

NPCA Myth: "The Ravensford tract was flooded during the recent severe rains during the week of May 5, 2003."

FACT: We did have a flood on the Oconaluftee River during the week of May 5, 2003 but flood waters did not even reach the Ravensford fields, much less the proposed school building site, which is located above the 100-year flood plain.

NPCA Myth: The Education Campus Site Evaluation was "poorly done" based on "hand-picked" criteria.

FACT: The site evaluation was done by independent professional engineers based on objective criteria.

NPCA Myth: The Park Service has, until recently, opposed the Ravensford land exchange.

FACT: In 1940, the Senate Committee on Indian Affairs sent a representative to negotiate with the Tribe, and he reached an agreement, including exchange of the Ravensford tract, that was satisfactory to the Tribe and the National Park Service, among other parties. Sen. Report No. 1491, p. 2 (1940). Without notice to the Tribe, that agreement was changed on the floor of the Senate.

NPCA Myth: NPCA implies that the Eastern Band has a hidden agenda, based on past efforts to acquire the property.

FACT: The Tribe has negotiated in good faith to restrict the development of the Ravensford tract to educational purposes, in a manner that will protect the environment. As noted in the Administration's testimony, those carefully negotiated restrictions are included in H.R. 1409.

NPCA Myth: The Yellow Face Tract is owned by a resident of Florida.

FACT: For almost two years, the Eastern Band has had an option to purchase the Yellow Face Tract from its former owner, hoping to complete the study process before having to exercise that option. The option was due to expire this Spring, so the Tribe exercised the option, and closed on the purchase.

NPCA Myth: The Yellow Face Tract is worth less than the Eastern Band claims.

FACT: An appraiser selected from a list provided by the National Park Service has appraised the Yellow Face Tract at \$590,000, using applicable Federal appraisal standards. He considered a number of relevant factors, including recent sales of similar tracts near the Parkway, and did not rely on the county tax value cited simplistically by NPCA. Using those same appraisal standards, the Ravensford tract has a significantly lower fair market value.

NPCA Myth: The Tribe does not need to reunify its boundary; it has access to the Big Cove Community.

FACT: Access is not the only issue at stake in jurisdictional integrity. For purposes of maintaining a Tribal community, it is important for the Eastern Band to reestablish the connection to Big Cove that was taken when it was severed by the Blue Ridge Parkway. For the same fundamental reason, the Eastern Band needs to build an education center in the heart of its territory on the Ravensford tract.

NPCA Myth: H.R. 1409 will "short circuit" the Environmental Impact Statement process.

FACT: The Draft EIS has been published and it finds no impairment of NPS resources from the land exchange. The Eastern Band has made a commitment with NPS to complete the EIS process, has spent \$1.5 million to date on the process, and will honor its commitment.

Mr. KILDEE. Thank you, Mr. Chairman.

Chief Jones, in your testimony you reference a situation about 60 years ago where the tribe tried to acquire this land but Congress changed the legislation at the last minute. What exactly happened there? You had been told that that land would be yours?

Mr. LEON JONES. At the time the Blue Ridge Parkway was going to be built through our reservation. The tribe and U.S. Government made an agreement, after much time and haggling. There was a right-of-way planned and given. Along with that right-of-way, the Cherokee were to be given the right to purchase Ravensford. It was in the bill when it came to Washington. When the bill came to be heard, a Senator, I believe it was, from Oklahoma, asked that that part, Ravensford, be deleted from the bill. So the legislation passed. The Blue Ridge Parkway was built. We were allowed to buy the Boundary Tree tract, which was the other part that we were going to be able to have, but they took the Ravensford Tract out of the legislation. That was the second time it was taken from us.

The first time was many years before, 1938, at the time of the Trail of Tears. This property has belonged to us for many, many years, sir.

Mr. KILDEE. You mentioned 1938. I make it part of my job to read treaties. I remember several years ago reading the Treaty of Detroit, how they treated the Michigan Indians and how very often they made the Indians follow the treaty but the U.S. Government did not always follow the treaty.

You have been really more than patient in this whole situation. I think you have been long suffering on this. Can you go into more detail as to how you plan to mitigate environmental concerns on that land?

Mr. LEON JONES. The tribe has already spent \$1.5 million on mitigation of these sites, on exploring them. We have also committed to another \$3 million to expand on the sites that remain and the ones that will be disturbed. So our commitment is firm. Our commitment will be honored and all of the sites on this property will be taken care of in the manner and the dignity that they should be treated, sir.

Mr. KILDEE. Mr. Blankenship, if you were a Michigan Indian, belonged to a Michigan tribe, under a bill which I introduced probably 37 years ago in Michigan, which is still a law in Michigan, the Ottawa, the Chippewa, the Potawatomi can go to a public college in Michigan and the State pays the tuition. So maybe you can get that done in your State some day down there.

Mr. BLANKENSHIP. Absolutely. I mean our tribe does an excellent job at getting us the funding to go to school, but.

Mr. KILDEE. Let me ask you, Mr. Blankenship, you seem to feel that it will be helpful to have all the schools situated on the same educational campus. Could you tell us why you think that might be helpful?

Mr. BLANKENSHIP. Well, in all ties and aspects of our Cherokee culture and multigenerational and familial society and ways of the Cherokee people, so it is more or less a way for us to protect our identity by protecting our language and our culture by keeping it all in one area. Language is key to this culture, so we bring in native language speakers, like I mentioned in my testimony, where they are able to travel from students in one school to the next. We also have a situation set up where older students will be able to assist in the education of younger ones.

Mr. KILDEE. I always carry with me the Constitution of the United States, and Article I, Section 8 says, "Congress shall have the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." That lists the three sovereignties right there in the Constitution, which is very, very important.

I think two of the great anchors for sovereignty, one is land, that is a great anchor for your sovereignty. The other is language. Many of the tribes in my State have lost their language. Some are trying to recreate it, but I think you are on the right track, and you should get involved in Government some day yourself.

Mr. BLANKENSHIP. Thank you.

Mr. KILDEE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jones?

Mr. JONES OF NORTH CAROLINA. Mr. Chairman, Thank you very much.

Chief, let me ask you a question. The land that you propose swapping or exchanging with the Federal Government, you own that land, the Cherokees own that land; is that correct?

Mr. LEON JONES. The Cherokee recently bought that land because the option we had on it was about to run out, and we

thought it was so important that we keep this land available to make this exchange, that we went ahead and bought it, sir.

Mr. JONES OF NORTH CAROLINA. Mr. Barger was saying that there are other sites that possibly the school could be built on. Do you know if there are other sites that could even be considered that would be satisfactory?

Mr. LEON JONES. There was a study done by an independent organization, sir, to see if there were other sites available. They came up with two sites that would be likely candidates for schools like we want to build. One of them was off the reservation, very close to the reservation. We inquired of the owners, and there were multiple owners. They were not interested in selling, sir, so that was not an option. The other property they said was suitable was the Ravensford property, sir. Those were the only two sites available. Anything else would have been miles away and too far to transport our children.

Mr. JONES OF NORTH CAROLINA. Let me ask you, how long have the Cherokee Indians been trying to get the Federal Government to work with them so that this new school could be built?

Mr. LEON JONES. I can only speak for myself, sir. I have been in office 4 years. I came up in the first 6 months of my administration, and have been working very diligently since that time.

Mr. JONES OF NORTH CAROLINA. Let me ask you one other question. I want to pick up on what Ms. Christensen was asking earlier with the first panel. Once you get the go ahead how long would it take to construct the school?

Mr. LEON JONES. If we were to get the go ahead in the very near future, we could probably build an elementary school in the next 3 years or so, and then it would take a little longer to build the middle school and high school, sir.

Mr. JONES OF NORTH CAROLINA. Mr. Chairman, I do want to say to Mr. Blankenship, as you go to NC State, home of the Wolfpack, I wish you well. I know you will do extremely well in the classroom.

And thank you, all three, for being here today. Thank you.

Mr. BLANKENSHIP. Thank you.

The CHAIRMAN. Mr. Pallone?

Mr. PALLONE. Thank you, Mr. Chairman.

I just wanted to say to the Chairman of Eastern Band that I am a cosponsor of the bill and I support the bill and am prepared to vote for the bill when the Committee considers it, but I wanted to mention a couple of things and then ask two brief questions.

One is, my feeling very strongly is that you have a bit of a crisis here in the sense that you have overcrowding, you have an old and dilapidated school. You need to move quickly to get this done, and I feel very strongly that we should do whatever we can to move the process forward for those reasons, not to mention what Mr. Kildee said about the issue of sovereignty. I feel kind of strange even sitting here and sort of presiding over the issue about whether or not you should be able to build the school on traditional Cherokee lands. I know that we are authorized to rule on that as Members of Congress, but it seems to me that every should be made to give the benefit of the doubt to you and what you feel is best.

Two questions I have, and one of them, Mr. Barger, talked about alternative sites, but my understanding is that none of the alternative sites that have been identified are really suitable in terms of the amount of land, and so there really isn't an alternative at this point. Would you just comment on that briefly?

Mr. LEON JONES. Yes, sir. The present elementary school is on a 9-acre site. To be an accredited school the Southern Association of Schools and Colleges requires that elementary schools the size that we need, has to be on 15 acres of more, sir. So even if we were to level the school that we have, we could not build new schools on it and be accredited because it is only a 9-acre site, sir, and besides it being in a very dangerous place, downtown Cherokee with much traffic going by it.

So it would take a piece of property the size of Ravensford to meet the criteria of the Southern Schools and Colleges, so like is said a few minutes ago, the only other sites available are off the reservation, and we would have been willing to purchase them had they been available. The one site that was close enough and suitable was not for sale, sir.

Mr. PALLONE. Then the second question, again briefly I will ask it, I understand that, again, Mr. Barger was making the point that this process should proceed administratively and suggests that there is no need for a bill. I assume the reason why you want this bill passed is because of the need to act quickly, that if you don't pass the bill it is going to take too long, and the problems that you have with overcrowding and bad conditions will just continue. But if you would just address that, the reason we need the bill versus just moving administratively.

Mr. LEON JONES. You are exactly right, sir. The administrative way is an option and might be successful in the long run and it is a long arduous process. After that, sir, if it were, then the people who oppose this land exchange could take it to court then and tie it up for many more years, so we're talking at a minimum 10 to 12 years to get through the objections. My children don't deserve that, sir. The people who are opposing us, I am sure that most of them may not be wealthy, but affluent, they send their children to the finest schools available to them, to their children, the best that they can afford. That is what I am asking for my children, sir, the best that we can afford. Why they oppose my children going to the best schools they can afford, I do not understand, sir.

Mr. PALLONE. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I would like to welcome the Chief and Mr. Blankenship for being here, as well as Mr. Barger from the NPCA.

Chief, I would like to ask you the first question just to follow up on the issue of alternative schools. Could you address the issue that has been raised in other testimony that maybe there were some areas identified in the Cherokee business development plan that might have been available for schools? Could you address that, the alternatives?

Mr. LEON JONES. Yes, ma'am. As I just stated, it takes many acres to build schools. It takes very small acreage to do business,

ma'am. If you build a restaurant you may only need one acre or an acre and a half. If you want to build a motel, you might only need an acre, an acre and a half or two acres. Yes, there are such available for business, and I agree wholeheartedly, but I do not agree that there are sites that are suitable for schools. The size is the limitation.

Mrs. CHRISTENSEN. The size, thank you. And as you have planned and done some studies around the possibility of putting a school there, do you believe that you can build a structure that would not be extremely intrusive on the park, that would blend in and maybe even enhance the park in some way?

Mr. LEON JONES. Yes, ma'am. There is a long arduous plan, and I have parts of it here. I will not take the time of this Committee. But it talks about buildings being very low structures, being of toned-down colors to match the area, to the roofs not being of the metal type where they reflect light, being of the asphalt type where they will not be seen.

Also the parts of this piece of property that are visible from the Blue Ridge Parkway—this chart, ma'am, the use of the Blue Ridge Parkway here, the trees and the terrain will not allow the schools to be seen from this portion. The other site, this is visible, this part is visible from Blue Ridge Parkway, and we have agreed not to build anything on that part where it can be seen. So these buildings will be of low tone, low buildings. There are only about 8 football games played a year, and someone has mentioned the light from them. The Blue Ridge Parkway closes for part of that time. The winters come on, snows are on them, so the lights have been toned down and only will be used about 8 times a year to where they might be seen from the Parkway. And most of those are during the wintertime when the Parkway is closed.

Mrs. CHRISTENSEN. Mr. Barger, one of the concerns—and you have said that the exchange is controversial. One of the concerns that brings us to the point of doing legislation around this is the concern that the NPCA and other groups might sue once the report is out. Is that a mistaken belief or is that a real possibility?

Mr. BARGER. Our position is that the exchange bill is premature because we want to have the administrative process, that is, the examination of the facts and the environmental impact statement move forward. We in fact agree with Assistant Director Jones, who spoke earlier, that probably if something is to be effectuated, legislation is the best way to do it in the long run, and that would eliminate in fact any lawsuits.

Mrs. CHRISTENSEN. I don't think I have any further questions, Mr. Chairman.

The CHAIRMAN. Mr. Inslee.

Mr. INSLEE. Chief Jones, I first got involved in politics trying to build a high school on kind of a rocky, slopey area, so I'm real sensitive to your desires to try to get a new school built, but it sounds like one of the important issues here is what alternatives may exist, and so I want to ask you about that. Would the tribe have a realistic alternative of building three separate schools as it has now? Do you have that alternative available to you, do you think? But realizing that is not your desire. I understand that.

Mr. LEON JONES. You have to have pretty good size pieces of land even to build an individual school. The sites of both of our schools—the middle school and the high school are combined—are not large enough. There are not sites—have you ever visited on our property, sir, may I ask you?

Mr. INSLEE. I haven't. I am sorry about that. I want to come.

Mr. LEON JONES. We live in very small valleys in very steep—most of our land stands on its side, and that is not conducive to building schools. One of the reasons we live in that is because back in the days that we acquired this land, no one else wanted it. It was too steep for any use, so consequently we were in very narrow valleys, and in those very narrow valleys our people live. Our businesses are built there and they are crowded. To acquire land large enough to build schools would be very difficult, sir, it not impossible.

Mr. INSLEE. Was that option evaluated? You referred to this study of an outside organization? Was that option evaluated?

Mr. LEON JONES. I believe it was, sir. I won't give you a definite yes because I might not be telling the truth.

Mr. INSLEE. I think it would be helpful, at least to me, if you could share that study. We could look at it.

Mr. LEON JONES. Yes, sir.

Mr. INSLEE. And then we might also ask Mr. Blankenship's organization to comment on that, specifically just to look at what alternatives exist, and I will tell you, to me this really is a difficult issue because we have two loves here, one for your children and two, our parks. And at least I am very cognizant of the dangers of a death by a thousand cuts to our park system because there are many sort of gateway communities that are growing up around our parks now because of the tremendous desire to go to the parks. And I can just see this coming from other communities as well who live in similar geographically constrained areas as yours. So I think this is a really important issue. And if you could perhaps provide us with that alternative study. Then we can ask Mr. Blankenship's group to comment on that. I would appreciate that.

Mr. Blankenship, do you have any comments about—Mr. Barger, I am sorry.

Mr. BARGER. Yes. We would be happy to give you an analysis and comment on the alternatives analysis. We do believe that it was very, very limited in scope. It did not look at, and in fact, the entire process that the National Park Service initiated limited its ability to look at what are the best options for making sure that the Cherokee schools are the best they can be. Their options were wrapped around assuming that we do the exchange. We have a no-action alternative, don't so it, and then we have two proposals for doing it in two different ways. So the analysis that the Park Service did sprang out of there. The alternative site study that was done by the consulting firm that Chief Jones mentioned was very limited in scope, and we would be happy to give you the information that we have on it.

Mr. INSLEE. Thank you. Thank you very much.

The CHAIRMAN. Mr. Udall?

Mr. TOM UDALL. I would just thank the panel members. I don't have any questions, Mr. Chairman.

The CHAIRMAN. Mr. Baca?

Mr. BACA. Thank you very much, Mr. Chairman. I am one of the cosponsors of the legislation. I think it is good legislation, and I appreciate the tribal chair's comment in terms of leaving no child behind. I think it is important that we create an atmosphere that is positive for a lot of the students. When you look at schools that are dilapidated, that puts kids in a very negative environment, and I think we have to put our kids in a positive environment where the schools are modernized. When we can deal with technology, we can deal with modernization. We can deal with conduit and others that need to be. If the children want to be competitive in the 21st century, it is important that our reservations have the same kind of schools that are being built outside of that area, and I think it is important that every one of children go into a position attitude, and positive attitudes are created when you have good schools and they feel good about that environment, and I think that is positive in building it, and I commend you in terms of that effort. I think having the three sites in that area is positive when you look at elementary, intermediate and then your high school too as well. I think it is positive in that area and I support this concept, especially as well look at self sufficiency in terms of Native Americans that have worked so hard to do this. And you have invested already \$1.5 million in terms of the study that has already been conducted.

When I look at alternatives sites and I look at the delay, now it will take 3 years. We are talking about 3 years to build the first elementary school. If another site was selected, what would be the time length of that, and has any money been invested at this point and who would invest that money then? Mr. Barger, my question is to you because you are the one that came up with the alternative site. There is already a site. There is already money that has been invested. Are you going to put up the money? Who is going to put up the additional money?

Mr. BARGER. The money that has been invested is a result of an agreement between the National Park Service and the Eastern Band of Cherokee that they both entered into, what, 2 years ago, about 2 years ago, to do the investigation of the Ravensford site. So that money is essentially part of that agreement and not part of necessarily the search for a piece of land. This exchange would in fact, as I think has properly been characterized, would exchange one piece of land for another, and that would be the value that the Eastern Band would be essentially putting forth for the Ravensford site.

If they were to choose an alternative site, they would be expected to put the money forth for that one instead.

Mr. BACA. They would be, right?

Mr. BARGER. Certainly.

Mr. BACA. They would. Not you or anyone else, so there is already money that has already been invested in this particular one site right now with an agreement. So it seems like all of a sudden we are talking about alternative sites that somebody else has to pay when yet money has been invested, and money is hard to come by, and yet we are saying because now Native Americans are self sufficient. They have gaming. All of a sudden we are saying, well, gee, they should be able to provide additional monies for additional

sites. I don't know where the other sites are at. I don't know who is going to pick up the cost out there. We already know that money has already been invested.

It seems that is the area that we should go in right now since the research has been done, the money has been invested. It is a positive site, and there is an agreement right now in terms of this particular site in exchange. I find it very difficult.

Then your comments about let the administrative process, well, the administrative process, we don't know how long it is going to even take, when another school will be built, or is that another delay tactic of not allowing them to build a site right now? To me that is prolonging it, which means then a child then loses. And every child that grows in age loses from the time that that child is in an educational environment, and we should make sure that that child has that opportunity, because every year I keep getting older, and the same thing with a child. A child gets older every year, and every year that child loses an opportunity to be in a positive environment with self esteem, self motivation, and aspirations to be what he or she wants to be. We have got to create that kind of an atmosphere, not create the negative one.

So it is difficult to say, we are overcrowded. Now, they have 800 and some students going to a school that only has capacity for 450 I believe.

Mr. LEON JONES. 480, I believe.

Mr. BACA. Somewhere in that neighborhood. But it seems like we should try to expedite this process and move the legislation. Legislation is the way to do it. Other than that, it is just another delay tactic, and we wait forever, and a child then is out of school, and before we know it, they are not competitive for the 21st century.

Mr. BARGER. I completely agree with the need to try to move forward and with what happens to generations of people. I think that the manner in which the United States of America has dealt with at least these schools—they are the only one with which I am familiar—is shameful. There is money to fix and renovate those schools that has not been spent for some time—

Mr. BACA. But it becomes difficult because you cannot even lay the conduit in a lot of these schools right now. I have dealt with a lot of the school. Yet, when you can't put the conduit that means that you can't have technology, which means then that they can't be as competitive, which means they have to have it at home or somewhere else, and you are not creating that kind of an atmosphere where a lot of them can't afford that.

Mr. BARGER. Yes, sir, I completely understand. Our point in wanting to have the administrative process move forward is that 2 years has been spent developing a very detailed environmental impact statement which contains a number of studies, and I am told, although I have not had a chance to see it yet, it is about an inch and a half thick. The delay has already happened. We have basically got the studies that are out there. The only time that is necessary in order to allow that process to play out, is just review those documents, receive public comment on those, and finalize the documents. So I think that it would be a mistake not to examine that information before we took the action, and that is the basis for our position.

Mr. BACA. Let us go forward with the project.

The CHAIRMAN. The gentleman's time has expired.

I just had a couple of more questions, and then I will excuse the panel.

Chief Jones, it was brought up in Mr. Barger's testimony, a question about the appraisal, and I believe that—and correct me if I am wrong—I believe that he said that the property that you were trying to get for the school was worth 6 million and what you purchased to trade was worth 58,000. I believe that is what he said. That is contrary to information that the Committee has received. Can you clear that up?

Mr. LEON JONES. Yes, sir. In the first place, I am a real estate appraiser, sir. I let my license die, but I was a real estate appraiser before. We have certain standards that we had to meet, Federal standards. We went to school and met those standards, and one of those standards was honesty and integrity. The appraisals were done. They were done by a person in the last several years. He did it the way that we were taught in school. He got comparables that were sold in the area to show what it was worth on both properties. I resent the fact that an appraiser's integrity has been questioned. If those appraisals in the past were made—and I am sure they were, he would not have said not--maybe that was before we had the Federal regulation of appraisers.

Today's market is not the same as yesterday's market. The appraisal was made recently, not in the past.

The CHAIRMAN. It is your testimony then that the appraisals on the two pieces of property are equal or close to each other?

Mr. LEON JONES. The Ravensford property was appraised at less value than the Yellow-Face property is, sir, and it is a larger piece of property.

The CHAIRMAN. So it was less value?

Mr. LEON JONES. The Ravensford is less than the piece we were proposing to give to the park.

The CHAIRMAN. Can you tell me, and you may have told me this before and I forgot, but how old are those appraisals that were done?

Mr. LEON JONES. They were updated within the last year, sir.

The CHAIRMAN. So they are current.

Mr. LEON JONES. Current by a competent appraiser.

The CHAIRMAN. Mr. Barger, I understand from your testimony, from reviewing your testimony, that your opposition to this is taking the land out of the park, and without going through the process, the EIRs and all of that. Is that accurate? Is that the basis for the opposition?

Mr. BARGER. I would say that it would probably be more accurately characterized that we are opposed to the development of the site.

The CHAIRMAN. No matter what?

Mr. BARGER. Yes, sir. It is the proposed development that we have before us and the impacts that we believe that would have on the national park, not just the site itself but on the surrounding national park, that lead us to oppose the bill that we have in front of us.

The CHAIRMAN. So regardless of how the EIR or EIS, doctors checkup, no matter how they all come out, you are going to oppose it anyway.

Mr. BARGER. Not necessarily.

The CHAIRMAN. Well, wait a minute. You just said that you opposed the development of the site.

Mr. BARGER. Right, and the reason is because we do believe—and this is from—I have also personally driven through the Qualla Boundary and the areas around and looked at the alternative sites. We do believe that there are in fact some alternatives that could and should be looked at thoroughly as part of the EIS examination process. I will tell you that if as a result of that process we became convinced that the Ravensford site is the only way to property provide for the schools that the Cherokee need, we would revisit our position immediately.

The CHAIRMAN. Is it your position or the group that you represent's position to oppose this Committee taking legislative action?

Mr. BARGER. It is our suggestion that the bill before you now is premature. We do believe that if a land exchange of some type is the appropriate action, is determined to be the appropriate action, that legislative action would be the appropriate way to go.

The CHAIRMAN. I am just trying to follow along with your position or your thinking on this, because it has been my experience that both in dealing with the Park Service and in dealing with the BIA, that we are not talking about months or a couple of years in order to get something done. It is multiple years that it takes.

Mr. BARGER. Yes, sir, and those years are behind us. We have, apparently, as I say, I haven't had a chance to see it yet, but we have the draft environmental impact statement supposedly being published. The Federal Register notice is supposed to go in the day after tomorrow I was informed.

The CHAIRMAN. But that doesn't end the process.

Mr. BARGER. It does not end the process.

The CHAIRMAN. We go through the comment period and the threatened lawsuits and—I mean you are looking at years before this thing gets done, and the Chief is concerned about his kids and his grandkids. I am more concerned about Mr. Blankenship's grandkids going to school.

Mr. BARGER. I think that concern is well placed. However, in this process we are close to the end of this process, and as I said, if in fact a—

The CHAIRMAN. We are not anywhere near the end of this process. You know that.

Mr. BARGER. The process under NEPA, after a draft environmental impact statement is published, is to take public comment and then publish the final environmental impact statement and record of decision.

What we would be looking at is the examination of the information that we get to do during the draft environmental impact statement. Then at that point this Committee and Congress can make a decision based on the information that is there, and that is literally all we are asking for.

The CHAIRMAN. I thank you for your testimony. I thank the panel for their testimony, and I again apologize for the delay, and

I appreciate your patience in sticking with us. Thank you all very much.

I am going to excuse this panel. I will remind you that there will be written questions that several members had that will be submitted to you, and if you could answer those in a timely manner so that they can be included in the Committee record, I would appreciate it.

Thank you.

The CHAIRMAN. I would like to call up our third panel to testify on H.R. 884, Mr. Felix Ike, Ms. Laura Piffero, and Mr. Raymond Yowell.

If I could have you stand and I will administer the oath, and then we can start.

[Witnesses sworn.]

The CHAIRMAN. To begin with, I want to thank this panel for your patience. I know this has been a long time and you have all been patiently waiting for your opportunity to testify, so I want to thank you for doing that. We are going to begin with Chairman Ike. In front of you we have the lights. The green light is a go, the yellow light is to sum up, and the red light is to stop. If you would try to keep your oral testimony to the 5 minutes, your entire written testimony or other material that you would like to submit to the Committee will be included in the Committee record, but if you would try to maintain your oral testimony to the 5 minutes.

Chairman Ike, we will begin with you.

**STATEMENT OF FELIX IKE, CHAIRMAN, TE-MOAK TRIBE OF
WESTERN SHOSHONE INDIANS OF NEVADA**

Mr. IKE. First of all, I want to thank the Committee for inviting me to do the testimony. This is an honor to come before the Resources Committee on a matter of great importance to the Western Shoshone people.

I am Felix Ike, Chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Te-Moak represents the four Te-Moak communities of Elko, Battle Mountain, South Fork and Wells. Our tribal council represents over 2,500 enrolled members which is more than 65 percent of the nearly 3,700 identified people who are one-quarter or more Western Shoshone blood. Te-Moak is four bands, and under Federally recognized tribes at Fallon, Duckwater, Ely, Yomba, Duckvalley. All have legitimately elected and recognized councils. The people overwhelmingly voted in favor of the distribution of the trust funds.

Te-Moak was the named claimant before the Indian Claims Commission. Thus this will be different than what the Western Shoshone National Council will say before this Committee. The Western Shoshone Indians of Nevada want the Committee to know that group has no legitimate authority to speak on behalf of Western Shoshone Indians except for a few individuals involved in that organization. They have no formal existence as a Shoshone Government within the recognized Western Shoshone communities. Nor are they recognized by the Federal Government as an American Indian tribe.

The Western Shoshones once occupied a large area of the western part of the United States including parts of Nevada, Idaho,

California and Utah. Our traditional way of life was closely connected with nature. Our land was abundant in resources including springs, streams and rivers, snow-covered mountains and valleys. Even the desert areas were full of plant and animal life.

When the non-Indians came into our land, they depleted our natural resources, destroyed our way of life, and forced us to adopt their ways. Of the vast territory that was once our homeland, only a few small colonies, branches and reservations have been set aside for us. In the interest of our future generations we need to expand our land base to support our tribal population and provide a base for which we can develop greater self sufficiency. It is our understanding that this legislation will not prevent us from expanding our land base in the future. The Western Shoshones have always had a strong attachment to our land, which encompassed many millions of acres as described in Article V of the Treaty of Ruby Valley. Our people traditionally knew every valley and spring in our vast territory. Our land has always been at the center of our culture identity and way of life. Expanding our meager land base is essential for the health and vitality of our communities and for the survival of our culture.

We ask Congress to consider the expansion of our land base to establish a permanent homeland for the Western Shoshone. We believe it was never the intent of Congress to leave the Western Shoshones homeless. Subsistence, hunting, fishing and gathering rights are of great importance to the Western Shoshone people. Our people hunt, fish and gather traditional food sources to supplement their diet. It is very important that Western Shoshones continue to have access to the traditional hunting, fishing and gathering areas, and that we continue to be able to hunt, fish and gather those traditional food sources which are part of our culture, our diet, a part of who we are.

Many tribal members rely on these traditional food sources on a subsistence basis. Traditional medicines are made from native plants, and plant sources gathered throughout our aboriginal territory. These are also important to our people for health, culture and religious reasons.

Our aboriginal lands were destroyed and poisoned by mining and toxic waste and other forms of abuse. The native animals and plants are disappearing from our lands that have suffered so much. Shoshones are the guardians of our environment. We traditionally practice a way of life that was in harmony with the earth. It is a part of our religion and a way of life to respect all forms of life. The land, the air, the water and animals, the birds and plants, are all interconnected and all depend upon each other for existence. We want our important hunting, fishing and gathering and spiritual areas to be set aside for us so that we can preserve them.

In accepting the claims money, we are not giving up any hunting, fishing and gathering rights. Northeastern Nevada's economy is in a period of decline. With unemployment rising in and near the Te-Moak communities, economic development to increase our self sufficiency is very important to our communities. But our opportunities are very limited. Our need for Federally funded services will continue in the areas of education, health, housing, community development, social services, judicial services, law enforcement, environ-

mental protection and other services necessary for a viable community. It is our understanding that this legislation to compensate the Western Shoshone for past wrong will in no way diminish the United States Government's obligation to continue to provide these services as needed for the health and well being of our people.

I now ask you to support the Western Shoshone Claims Distribution Act, to distribute the claims awarded through Docket 326 K, 326A-1 and 326A-3, with the same language contained in S. 958 referred to House submitted during the 107th Congress. That would maximize the chance of rapid passage by both houses of Congress.

The Western Shoshones voted on three questions: whether or not to accept the claims money from Docket 326 K, whether tribal members of at least one-quarter degree Western Shoshone blood should be able to participate in the settlement, and whether or not 326A-1 and A-3 should be placed in an educational trust fund. The vote was 1,647 to 156 in favor of distribution; 1,601 to 196 in favor of tribal members with at least one-quarter degree of Western Shoshone blood participating; and 1,020 to 769 in favor of an educational trust fund. The majority of Western Shoshone voters clearly support distribution as described in the Western Shoshone Claims Distribution Act. It is the mandate of the people that we move forward in this process.

This money was awarded so many years ago in an attempt to compensate the people for some of the wrongs that had been done to us. Too many of our tribal member have passed away without benefiting from the money that was set aside for them. Although it cannot fully compensate us for the loss of our land and way of life, the claims money may help to make life better for the tribal members who receive a share. Te-Moak and the other Western Shoshone communities overwhelmingly voted for the distribution claims dollars. I believe they have waited long enough for this distribution.

I thank you.

[The prepared statement of Mr. Ike follows:]

Statement of Felix Ike, Chairman, Te-Moak Tribe of Western Shoshone Indians of Nevada, on H.R. 884

This is an honor to come before the Resource Committee on a matter of great importance to the Western Shoshone people. I am Felix Ike, Chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Te-Moak represents the four Te-Moak Band communities of Elko, Battle Mountain, South Fork, and Wells.

Our Tribal Council represents over 2500 enrolled members which is more than 65% of the nearly 3700 identified people who are 1/4 or more of Western Shoshone blood. Te-Moak, its four bands, and the other Federally recognized tribes at Duckwater, Ely, Yomba and Duckvalley all have legitimately elected and recognized councils. The people overwhelmingly voted in favor of distribution of the trust funds.

Te-Moak was the named claimant before the Indian Claims Commission, thus this will be different than what the Western Shoshone National Council (says or said) before this Committee. The Western Shoshone Indians of Nevada want the Committee to know that group has no legitimate authority to speak on behalf of Western Shoshone Indians except for the few individuals involved in that organization. They have no formal existence as a Shoshone Government within the recognized Western Shoshone communities, nor are they recognized by the Federal government as an American Indian Tribe.

The Western Shoshone Nation once occupied a large area of the western part of the United States, including parts of Nevada, Idaho, California and Utah. Our traditional way of life was closely connected with nature. Our land was abundant in re-

sources, including springs, streams and rivers, snow-covered mountains and rich valleys, and even the desert areas which were full of plant and animal life. When the non-Indians came into our land, they depleted the natural resources, destroyed our way of life, and forced us to adopt their ways. Of the vast territory that was once our homeland, only a few small colonies, ranches and reservations have been set aside for our use. In the interests of our future generations, we need to expand our land base to support our tribal population and provide a base from which we can develop greater self-sufficiency. It is our understanding that this legislation will not prevent us from expanding our land base in the future.

The Western Shoshone have always had a strong attachment to our land, which encompassed many millions of acres as described in Article V of the Treaty of Ruby Valley. Our people traditionally knew every valley and spring in our vast territory, and our land has always been at the center of our cultural identity and way of life. Expanding our meager land base is essential for the health and vitality of our communities and for the survival of our culture. We ask Congress to consider the expansion of our land base to establish a permanent homeland for the Western Shoshone. We believe it was never the intent of Congress to leave the Western Shoshones homeless.

Subsistence hunting, fishing and gathering rights are of great importance to the Western Shoshone people. Our people hunt, fish and gather traditional food sources to supplement their diet. It is very important that Western Shoshones continue to have access to traditional hunting, fishing, and gathering areas, and that we continue to be able to hunt, fish and gather those traditional food sources which are part of our culture and our diet, a part of who we are. Many tribal members rely on these traditional food sources on a subsistence basis. Traditional medicines are made from native plant sources gathered throughout our aboriginal territory, and these are also important to our people for health, cultural, and religious reasons.

Our aboriginal lands were destroyed and poisoned by mining, toxic waste, and other forms of abuse. The native animals and plants are disappearing from lands that have suffered from so much abuse. Shoshones are the guardians of our environment. We traditionally practiced a way of life that was in harmony with the earth. It is a part of our religion and way of life to respect all forms of life. The land, the air, the water, the animals, the birds and plants are all interconnected and all depend upon each other for existence. We want our important hunting, fishing, gathering, and spiritual areas to be set aside for us so that we can preserve them. In accepting the claims money, we are not giving up any hunting, fishing or gathering rights.

Northeastern Nevada's economy is in a period of decline, with unemployment rising in and near the Te-Moak Tribal communities. Economic development to increase our self-sufficiency is very important for our communities, but our opportunities are very limited. Our need for Federally funded services will continue in the areas of education, health, housing, community development, social services, judicial services, law enforcement, environmental protection, and other services necessary for a viable community. It is our understanding that this legislation to compensate the Western Shoshone for past wrongs will in no way diminish the United States government's obligation to continue to provide all these services as needed for the health and well-being of our people.

I now ask you to support the Western Shoshone Claims Distribution Act to distribute the claims awarded through Docket 326 K, 326 A-1 and 326 A-3 with the same language contained in S958 RFH submitted during the 107th Congress. That would maximize the chance of rapid passage by both houses of the Congress.

The Western Shoshone voted on three questions- whether or not to accept the claims money from docket 326K, whether tribal members of at least 1/4 degree of Western Shoshone blood should be able to participate in the settlement, and whether or not 326A-1 and A-3 should be placed in an educational trust fund. The vote was 1647 to 156 in favor of distribution, 1601 to 196 in favor of tribal members with at least 1/4 degree of Western Shoshone blood participating, and 1020 to 769 in favor of the educational trust fund. The majority of Western Shoshone voters clearly support distribution as described in Western Shoshone claims distribution Act. It is the mandate of the people that we move forward on this process.

This money was awarded so many years ago in an attempt to compensate the people for some of the wrongs that have been done to us. Too many of our tribal members have passed away without benefiting from money that was set aside for them. Although it cannot fully compensate us for the loss of our land and way of life, the claims money may help to make life better for the tribal members who receive a share. The Te-Moak Tribe and other Western Shoshone communities overwhelmingly voted to support the distribution of the claims money. I believe they have waited long enough for it to be distributed.

Thank you.



The CHAIRMAN. Thank you.
Ms. Piffero?

**STATEMENT OF LAURA L. PIFFERO, LEAD CO-CHAIRMAN,
WESTERN SHOSHONE CLAIMS DISTRIBUTION STEERING
COMMITTEE**

Ms. PIFFERO. Good afternoon. I am grateful to the Resource Committee for authorizing this hearing and for the support of our Nevada Congressmen, Mr. Gibbons and Mr. Porter, thank you.

I am Laura Piffero, Lead Co-Chairman of the Western Shoshone Claims Steering Committee. We support H.R. 884 and represent the majority opinion. 91 percent of the Shoshones voted on 7 reservations to distribute their 1977 court award, the last of 5 Shoshone Treaty claims in the United States and the last major tribe in Nevada to be compensated for losses sustained.

The Senate, after markup of a companion bill passed in the 107th, created differences. We would like to propose minor amendments as specified in the written testimony Section 2(2), certain individuals ineligible, to add the words, "Based upon aboriginal land claim." Section 3 on the Administrative Committee, (2)(A) and (2)(B) and (2)(B)(v) to be comprised exclusively of Western Shoshone's, due to its tribes, and to add Section 5 on regulations.

I will speak about the factors that have led to the majority support of this bill, the good, the bad and the ugly. It is a brief overview about the Shoshones, their years of involvement in the

Federal courts, their political and cultural distinctiveness, and how they were impacted by the 1863 Treaty of Ruby Valley.

Despite a period of suffering during U.S. land expansion, the Shoshones are loyal to this country and fought for America in foreign wars. Culturally the Shoshones were a peaceful people and struggled to adapt to a changing world and to cooperate with their new neighbors. Western Shoshone aboriginal territories covered two-thirds of Nevada. They became a captive tribe due to no major battle with encroaching immigrants. The Shoshones feel the 1863 Treaty had too many concessions and placed the people in a downward spiral of poverty. In 1863 the Shoshones group in the west signed treaties of peace, of friendship, giving the U.S. the right to engage in multiple uses of Shoshone land. The Shoshone Treaty signed in Ruby Valley was two pages in length.

It has been argued there were treaties of succession, as Article II through IV gave the land for military post, telegraph, railways, mining, agricultural settlement and timbering. Article VI changed the Shoshone's historical use of the land. The reservations, whenever the President of the United States deemed it expedient, reservations were to be established within the country above described. One was the Carbon Farms, later moved to Duckvalley outside of the country designated. Severe hardship and starvation fell upon Shoshones during this period of displacement and adaptation. Article VII promised as full compensation \$5,000 for 20 years for the inconvenience resulting from the occupation of others, privileges conceded and adherence to the treaty.

Article VIII acknowledged the receipt of provisions and clothing upon signing. Although the Supreme Court determined the award had been accepted by the Secretary of the Interior on behalf of the Western Shoshone over 26 years ago, payment has never been distributed.

Sixty-seven years ago, 1951, Article V became the vehicle of injustice by which the Shoshones entered 26 years of litigation under the 1946 Indian Claims Commission Act. Final judgment was reached in 1977 and determined the Shoshones lost their land by gradual encroachment.

Had the Shoshones not filed this case in 1951, there would be no court award today. 11 years after the claim was filed, minority dissidents attempted to halt the proceedings. Unsuccessful, they tried to stop the 1979 appropriation. Due to political instability no common distribution plan was developed in 1981 as required under the 1973 Indian Judgment Funds Act.

In 1974 the dissidents supported Danns' cattle trespass case as the defense project to the Supreme Court. It lasted 15 years. Minority cattlemen and supporters established nonprofit corporations, collecting Internet donations. Preposterous misleading newspaper remarks said they represented the Shoshone Nation. The public thought they were an elected body. Their unpaid trespass fees amounted to over a million dollars. Their press touted it is still Shoshone land as the people do not want the money, they want the land, or refuse to take the money. In truth, the majority wanted their award disbursed. In 1985 the United States Supreme Court in Cattleman Danns case concluded that payment of the claims to

trust for the Shoshones effectuated full settlement of all claims against the United States.

The minority received over a million dollars in ANA and BIA grants to resolve land issues. Federal land negotiations at the highest level failed in 1994. A promised plan for the WSNC in Vucanovich's 1990 House hearing never materialized. The Shoshone people felt their leaders did not negotiate in good faith and discussed the beneficiaries of the award via the Steering Committee. Given their civil right to band together and take action or to submit a bill, a 1998 referendum revealed the true collective interest. 96 percent favor distribution in 2002. Senator Reid requested another vote. 65 percent of the eligible enrolled Shoshones participated. 91 percent favored distribution.

At two meetings when a division of the House was called, where only 3 people stood in opposition to the bill, they were loudly booed when speaking. The minority's pursuit to claim two-thirds of Nevada is unrealistic. The international report for the Dann case before a United Nations Commission since 1993, was rejected by the United States in its entirety. The report noted that the Dannels' be afforded resort to the courts for the protection of their property rights. Apparently the commission viewed their 15 years of litigation to the Supreme Court as insufficient, and that subsequently, 1991 case abandonment to pursue allowable individual aboriginal title as unimportant.

This endless legal debate is a delaying tactic that benefits a small minority culturally as more elders pass on, their hopes never realized. It angers many. The manipulation of some tribal chairmen to suppress the majority opinion, illegal council meetings and resolutions, minority promotion of non-Shoshones interference in the claims, has ruined the credibility of some elected leaders and destroyed faith in their ability to act in a fair and forthright manner in representing the majority's mandate.

Most Shoshones do not want the monetary award held hostage any longer. Needed lands should be handled by individual tribes with the relevant stakeholders and separated from the distribution.

Finally, the Shoshones have endured much in their quest for justice. It was the intent of Congress, when it passed the Indian Claims Commission Act in 1946 to bring finality to Indian claims, not to leave claims hanging in limbo for over 25 years. As Congress said, no one should be allowed to litigate a claim forever. It is time to effectuate this distribution to the Western Shoshone. We now rely on Congress to resolve this longstanding court award and distribute it to the beneficiaries as intended under the law.

In conclusion, the matter here before us today is not whether an award is due to Western Shoshone. The issue is to determine the procedural means by which Dockets 326 K, 326A-1 and 326A-3 will be distributed. It is a matter of process. This bill lays out that process. The Steering Committee on behalf of the majority respectfully requests that the Resource Committee pass H.R. 884 back to the full floor of the House for consideration in the interest of the long-sought closure of my people.

Thank you.

[The prepared statement of Ms. Piffero follows:]

Statement of Laura Piffero, Lead Co-Chairman, Western Shoshone Claims Distribution Steering Committee, on H.R. 884

Mr. Chairman, Committee Members, I am Laura Piffero, Lead Co-Chairman of the Western Shoshone Claims Distribution Steering Committee. Our group is a grass roots volunteer Committee. We represent the 1998 and 2002 referendum where 91% of the Shoshone people voted on seven reservations to have their court award distributed. The Western Shoshone Claims in the last of five Shoshone treaty claims to be paid in the United States and the last of the major tribes in Nevada to be disbursed. We are grateful to the Resource Committee for authorizing this hearing and for the support of Nevada's Congressional Delegation in the House, Congressman Jim Gibbons and Congressman Jon Porter and in the Senate, Senator Harry Reid and Senator John Ensign. The companion Bill in the Senate was passed last year in the 107th.

I am here to present testimony for the Steering Committee in favor of H.R. 884, the "Western Shoshone Claims Distribution Act". The Shoshone people are aware that the Resource Committee will have "mark-up" on the Bill. The Steering Committee would like to propose AMENDING the following Sections:

- Under Section 2, (2) Certain Individuals Ineligible. After the words "" a per capita payment from any other judgment fund" add the words "based upon an aboriginal land claim." (Note: the Bureau of Indian Affairs Tribal Services concurs with this change.)
- Under Section 3, (2)(A): after the words "An Administrative Committee" to add the words, "exclusively comprised of Western Shoshone..."
- Under Section 3, (2)(B): at the beginning after the word "The" add the words "Western Shoshone" to read—"The Western Shoshone Administrative Committee..."
- Under Section 3, (2)(B),(v) to be revised from "The Western Shoshone Business Council of the Duck Valley Reservation" to read "The Western Shoshone Committee of the Duck Valley Reservation".

As others will address various issues—I will speak about that which is not always so apparent to people on the fringes of a problem, the subtle factors that has lead to the people's support of this Bill and factors in the past that have acted to delay support for distribution—the good, the bad, and the ugly. I hope this will give you some insight about the people for whom you are about to make a very important decision—either to vote in favor of S. 958 as is, or to change, or to allow to die in Committee.

First, THE GOOD:

- THE SHOSHONES ALLEGIANCE TO THE UNITED STATES. Despite "minority" news reports to the contrary that draws attention to issues of discrimination¹, the Shoshone people are thankful that they live in this country and are proud of their participation in various global military conflicts to promote and preserve the nation's security, freedom and peace. Yes, there does exist a dark period in the history of the displacement of the Shoshones to reservation in the late 1800's, as part of Indian removal acts across the United States that were repeated 53 times by 1868. Unfortunately, in a conflict of cultures the five 1863 Shoshone treaties of "Peace and Friendship" were eventually and gradually taken advantage of by unscrupulous individuals, both non-governmental and governmental. In regard to Indian title to the land, the U.S. Supreme Court observed that "such extinguishments raise political, not justiciable, issues."² Likewise, in another case, it was further stated that "... its justness is not open to inquiry in the courts", that "the exclusive right of the United States to extinguish" Indian title has never been doubted"³. Concerning "recognized title", in the *Sac and Fox Tribe v. United States* the court stated, "... Congress, acting through a treaty...must grant legal rights of permanent occupancy within a sufficiently defined territory. Mere executive "recognition" is insufficient as is a simple acknowledgment that Indians physically lived in a certain region", such as in the Western Shoshones treaty of 1863. In some treaties, the United States recognized title by relinquishing its claim to a specific area and promised to protect the Indians within the borders of their land, such as the Sioux treaty. This was not stated in the "Treaty of Ruby Valley" under "Article V".⁴ In 1974, when a group of Shoshone people attempting to stop the court proceedings filed a mo-

¹Las Vegas Review Journal, "Indians Ask U.N. to Protect Rights" Las Vegas, Nevada. 2000.

²United States V. Santa Fe Pacific Ry., 314 U.S. 339, 347 (1947)

³Beecher v. Wetherby, 95 U.S. 517, 515.

⁴1863 Treaty of Ruby Valley, Article V: It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

tion for rehearing on the findings of title by the ICC (1962), according to a 30 day time limit under the “Rules of Procedure”, they were 11 years to late⁵. In the end, Congressional action is the only way to restore tribal title. With the passage of time, assimilation, reorganization, and relocation the vast “majority” of Western Shoshone people have laid their feelings to rest. The outcome of the 1998 and 2002 referendums for distribution is symbolic of the peace, closure and restitution they desire.

- **THE SHOSHONES VIEW THE CLAIMS AWARD AS AN APOLOGY OF SUBSTANCE** offered by the United States via the U.S. Indian Claims Commission established after the injustices to the American Indian became more widely known to principled contemporary politicians following World War I. The Shoshones enthusiastically filed their case for the wrongs done in 1951. It was fraught with numerous attempts by some “minority” dissidents to change the litigation strategy in the judicial process. Had a withdrawal been successful, there would be no court awarded claims today.
- **THE CONTINUING HOPE OF THE SHOSHONE PEOPLE,** Now the Shoshone people look to Congress to conclude the claims after 41 years of litigation (1951–77 & 1974–89), 52 years of debate, and 99⁶ years of faith of the elders that the claims would be finalized. Now they are placing their trust in an extremely difficult course to traverse—the Congressional legislative process—with the hope it will not let them down and H.R. 884 will be passed within the allotted time.
- **DEMOCRACY IN ACTION.** The Shoshone people were pleased to finally get the opportunity to be heard at the ballot box through a straw poll. Tribal voter eligibility lists and required individual identification was employed to determine Shoshone affiliation. Those unable to attend their reservation’s polling site were allowed with proof of tribal enrollment to request an absentee ballot. A few Shoshones who chose not to enroll in an IRA tribe but wanted to vote were allowed to complete a “Letter for the Record” after certifying that they had not received any other claims award, offered a photo I.D. and stated their degree of blood. In 1998, 96% favored distribution. The results were 1,230 voted “yes” and 53 voted “no”.⁷ In 2002, 91% favored distribution with 1647 “yes” and 156 “no”. It was estimated that approximately 65% of the eligible enrolled adult Shoshones participated in the straw poll. Of the seven reservations / colonies, NONE has ever put the question of distribution on their annual election as an advisory question in the last 26 years after the award was confirmed. Therefore, the Steering Committee felt the question needed to be answered to determine the direction of the Committee on distribution.
- **A REALISTIC OUTLOOK.** It is time to put behind the disappointment in the failure of the tribal system of government and their inability after 26 years to coordinate their inter-tribal efforts to produce a comprehensive plan for distribution to settle this issue. It was the instability and manipulation of tribal politics by those opposed and their lawyers, that gave impetus to the formation of a “people’s committee” or the Western Shoshone Claims Distribution Steering Committee in 1997. It is the CIVIL RIGHT of a descendent group to submit a Bill to congress, to band together and take action. At a publicly held meeting concerning the legislation in Elko, NV, (8/21/99) with half of the gymnasium and the center filled in a “division of the house” a vote of confidence in the Bill and in the Steering Committee was called for. Three people stood opposing the legislation and the Committee. In Fallon NV, (9/12/99) no one in a gym half full stood against the Bill or Committee.

Second, **THE BAD:**

- **THE DEATH OF ELDERLY BENEFICIARIES** who had basic needs and were forgotten in the never-ending controversial litigation. Their dreams and hopes for a better future were never realized. It was their generation that was fraught with a multitude of social and economic problems in an era of little opportunity. A distribution could have provided something as simple as a new mattress. The growing resentment against those who oppose the claims distribution was obvious when at the public meeting on the Bill the three who opposed the Bill were loudly booed when speaking.
- **TRIBAL ELECTIONS ARE BASED ON KINSHIP NOT ON ISSUES,** issues such as the “Claims”. Unemployment remains high on isolated reservations (Yomba, Duckwater, South Fork, Duck Valley). Jobs are scarce with the excep-

⁵... TeMoak Bands of Western Shoshone Indians, Nevada, and Western Shoshone Legal Defense and Education Association” v. United States, decided 2/20/75.

⁶Johnny, Ike. Enrolled member of the Fallon Paiute Shoshone Tribe. 99 years old.

⁷Official Tally, “Referendum for the Western Shoshone Claims Distribution Act”, 2002.

tion of tribal jobs and having a tribal job means voting family members to office. Therefore, much time and energy is spent on electing relatives to council seats, not on a representative's stance on issues.

- **THE CHANGING FACES OF DEMOCRACY.** Elections cause change—in leadership, objectives, and claims negotiation's progress in the government-to-government process. Democracy is good in one sense, but has its weaknesses also. Constant change in tribal leadership means the end to long range goals and partially why no one comprehensive distribution plan ever materialized. When given a deadline to develop a plan under the 1973 Indian Judgment Funds Act in 1980, they failed. This tribal political instability was to the advantage of the stable core "minority". More recently (1997), it was also to the advantage of the Steering Committee's ability to move the claims issue forward, to obtain the consensus of the Shoshone people and to promote resolutions of support from the majority of tribal governments—some resolutions have vacillated with new councils the last seven years. However, the people's desire to have their court award distributed on all reservations never changed. Where a tribal government "for, by and of the people" did not exist in representing the distribution of the claims, the people organized petition drives so that they might be heard over their councils. Where a petition was necessary to support distributing the claims, endorsement ranged on two reservations at 85% and 90% (Yomba and South Fork councils has never supported the claims distribution due to councilmen's cattle interests).
- **COUNCILMEN OR LEADERS THAT REPRESENT SPECIAL INTEREST GROUPS OR HAVE A SELF INTEREST.** Some leaders / councilmen opposed to the claims distribution have BLM cattle trespass charges amounting to a million dollars or more.⁸ They work through their lawyers and the news media to defeat distribution of the award as a reason to continue to use the land by claiming it is still "Shoshone land" as "the people do not want the money" or "refuse to take the money"—in total disregard of the of the U.S. Supreme Court decision⁹ and the decision of the Shoshone people per the two straw poll referendums. Information is power and the control of information coming through tribal offices is tightly guarded as to what is told or not told to the people. When information is kept from the Shoshone people or twisted it limits their ability to make well informed decisions and retards the decision making process. Telling the Shoshones they still own the land is a shameful deceit and only causes confusion and creates controversy. Of course, some will say there is money to be made in an atmosphere of controversy.
- **CONTROL OF THE FOUR CHAIRMEN OF THE "SUCCESSOR TRIBES"**...controls the government-to-government relationship in negotiation, a subtle mechanism. The "minority" leadership and their lawyer(s) have utilized this process over the years. It resulted in the "majority" opinion being suppressed,¹⁰ the people being put on the "back burner". This political manipulation and maneuvering was evidenced most recently after the August 2, 2002, Senate hearing. In an illegal meeting of the four Te-Moak band chairs, several resolutions were passed against the people's voice or straw poll.¹¹ Once the people heard about this outrage in the largest band, Elko, the Elko council passed a resolution to not recognize the "illegal" resolutions.¹² Even today, this is not widely known due to the control of information to the people by four leaders involved. An added drawback, is the lack of a tribal newspaper on various reservations.

Third, **THE UGLY:**

- **THE LACK OF FAITH IN TRIBAL ACCOUNTABILITY** due to questionable accounting/ budgeting procedure and little to no public reporting mechanism¹³ one reason people do not want any hold-back for tribal programming. The Steering Committee has received numerous comments on how if a hold-back on funds was implemented in the Bill with no restrictions, such as interest only to be expended plus categories for use, the capitalization to the tribes will not be able

⁸[⁹Nordwall, Wayne. BIA Area Director. Memorandum: "W.S. Claims Distribution". Phoenix, AZ, 1998.](http://www.alphaadc.com/wsdp/[W.S. Land Rights and Grazing] W.S. Defense Project. No date.</p>
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¹⁰Elko, NV. Te-Moak Council Meetin. Flyer mailed to Fallon Committee: "Cattle Over People, WSNC", 1999.

¹¹Letter to Senator Inouye, Senator Campbell, and Committee on Indian Affairs by Felix Ike, Te-Moak tribe chairman. 8/29/02. 2pp.

¹²Elko Band Council. Resolution N. 2002-ECB-28. Elko, NV 8/28/02. 3 pp.

¹³Reno Gazette Journal (Reno, NV), "25 Month Prison Sentence for Embezzling Tribal Officer" (Duckwater). 1997.

to be found in seven to nine years as has happened with other Indian nations' court awards.

- **PRETENTIOUS DECLARATIONS BY THOSE OPPOSING DISTRIBUTION OF THE CLAIMS.** Federally recognized IRA tribes have their own Constitution and By-Laws. They are independent of each other. For an organization to declare that they are part of a "nation" of people is questionable. No one single entity is a sole representative of the various Shoshones around the state. Yet, the Western Shoshone National Council (WSNC)¹⁴ has made such preposterous claims of "representation". The majority of Shoshones see this organization(s) with limited numbers attempting to assert themselves into the governmental process on negotiations or into the news media on behalf of the "Western Shoshones", in a sense displacing the officially recognized IRA governments. The WSNC goes on to use the "Western Shoshone—name in international forums. Their term "traditional government of the Shoshone nation" or "Western Shoshone nation" is misleading. Most non-Indians or institutions will interpret this to mean an "elected" government, which is quite different than being a registered Nevada non-profit corporation. In addition, donations (money, gifts of real property, clothes, trucks, night vision goggles, etc.) being requested over the internet in the name of the "Western Shoshones" is debatable when most Shoshones are unaware of the contribution.
- **THE LITIGANTS OPPOSING DISTRIBUTION,** unlike the changing faces of elected official, these faces never change" They were at the Interior Department negotiation meetings in 1982, 1984, 1985, 1986, 1994, and former Congressman Vucanovich's House hearings in 1990 and 1992—all of which failed. Some are still here today in opposition, probably not with a "good faith plan", but to undermine the "majority" opinion and as always to stop distribution.
- **NEWSPAPER PROPAGANDA BY SPECIAL INTERESTS** that tout the Shoshones are opposed to this or that¹⁵ when in fact the average Shoshones know nothing about nor have they agreed to what is published. This same propaganda was used in the past to say, "the Shoshones don't want the money they want their land". This is why a straw poll had to be completed to reveal the truth about the interest of the Shoshone people, descendants and beneficiaries of "The Western Shoshone Identifiable Group" court award 326-K.
- **THE UNENDING DEBATE BY MINORITY OPPONENTS** over land title, mineral rights, religion, air, etc" has kept the Shoshones' right to their court award or a tribal plan in limbo. The latest development is the presentation to staff members of the Indian Affairs Committee (7/26/02) of a 2001 international report by the Inter-American Commission on Human Right (Case No. 11.140—Mary and Carrie Dann), which the United States rejected "in its entirety". The case that has been before the U. N. Commission since 1993. The U.S. Supreme Court (1985), after deciding that payment into trust for the Shoshone people effectuated full settlement of all claims and the extinguishments of aboriginal title, left the door open for "individual aboriginal title". The Danns could have pursued this avenue, but the lawyers for the Danns withdrew their case from the U.S. court system in 1991. Now the deficiencies mentioned in the Commission's report, partly that the Danns "be afforded resort to the courts for the protection of their property rights", reiterates what probably should have continued to be litigated in 1991. Given the past history and the years of prior suit by the Danns (1974–1989), the Federally financed opportunities for land settlement negotiations amounting to over a million Federal dollars, and the Indian title issues before the U.S. courts in past case law" it is best to separate the land issue (reservation by reservation) from the monetary distribution and, in following the people's wishes, distribute 326-K, 326-A-1 and 326-A-3.

FINALLY, the aforementioned factors both negative and positive have contributed to the present status of the Western Shoshone Claims. The Shoshones have endured much in their quest for justice and finality. The 1946 Indian Claim Commission Act passed by Congress gave the Indian people their day in court to air grievance suffered. The limitation was "no one should be allowed to litigate a claim forever." It was not the intent of Congress to leave claims hanging in limbo for over 52 years. We now rely on the judgment of Congress, where 100% agreement is a rarity, to end this long standing Claim. The Steering Committee on behalf of the "majority opinion" respectfully requests that the Resource Committee pass H.R. 884, as soon as possible back to the full floor of the House for consideration in the interest of the long sought judgment and closure our people deserve. Thank you.

¹⁴Information on Those Opposed to Distribution—Who are They and What do They Represent?

¹⁵Reno Gazette Journal (Reno, NV), "W.S. Oppose F-22 Fighter". 1999.



FALLON PAIUTE-SHOSHONE TRIBE

RESOLUTION 01-F-337

BE IT RESOLVED BY THE GOVERNING BODY
OF THE FALLON BUSINESS COUNCIL THAT;

WHEREAS: The Fallon Business Council is the recognized governing body of the Fallon Paiute-Shoshone Tribe with the responsibility to exercise the privileges and powers of self-government, to conserve and develop our resources and to secure the social and economic well-being of our Tribe; and

WHEREAS: The Fallon Business Council through Resolution 97-F-063 recognized the Fallon Shoshone Claims Committee as the representative body of the Fallon band of Western Shoshone with powers to negotiate directly with various private, tribal and governmental entities regarding the Western Shoshone Claims; and

WHEREAS: Within the total membership of 1001 there are 653 direct descendants of eligible Western Shoshones who are possible beneficiaries, of whom 347 are one-quarter or more blood degree, of the "Western Shoshone Claims Distribution Act", S.958 and H.R. 2851; and

WHEREAS: The Fallon Business Council -- following the May, 1998, eastern and western area Shoshone claims distribution referendum (1,230 voted yes & 53 voted no) -- on February 22, 1999, approved Resolution 99-F-028, the "Western Shoshone Claims Distribution Act" sanctioned by the Bureau of Indian Affairs, with a 100% per capita disbursement to Western Shoshones of one-quarter blood degree or more, with a perpetual educational fund component, and for the use and distribution of Docket 326-K, 326-A1 and 326-A3; and

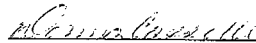
NOW, THEREFORE BE IT RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in representation of the second largest band of Shoshones in the state of Nevada do hereby reaffirm our support of the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" introduced into the U.S. Senate (S.958) and U.S. House of Representatives (H.R. 2851) of the 107th Congress; and

BE IT FURTHER RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in the interest of our Shoshone members approve of the Department of Interior Nevada Congressional delegation and Congress expeditiously bring to conclusion as is without modification S. 958 and H.R. 2851 in keeping with the consensus of the Shoshone people and the Fallon Band of Shoshones; and

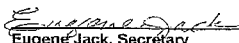
AND, BE IT FURTHER RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in support of our Fallon Band of Western Shoshones request that this "Resolution" be entered as part of the record in the forthcoming Congressional hearings on the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" and be transmitted to the Nevada Congressional Delegation and to all appropriate offices of the Bureau of Indian Affairs.

CERTIFICATION

At a duly held meeting of the governing body of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, consisting of seven members, of which four constitutes a quorum, that was present on this 2nd day of October, 2001, and voted 7 in favor, 0 against, 0 abstaining, in the adoption of the foregoing Resolution, according to the powers vested by the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Constitution and By-laws.



Donna Cossette, Chairman
Fallon Business Council



Eugene Jack, Secretary
Fallon Business Council

UNITED STATES GOVERNMENT

memorandum

Office of the Area Director (802) 378-6600

DATE: December 1, 1998

REPLY TO
ATTN OF: Phoenix Area Director

SUBJECT: Western Shoshone Claims Distribution

TO: Deputy Commissioner of Indian Affairs, MS# 4140-MIB

In 1977, the Indian Claims Commission awarded the Western Shoshone Indians \$26 million dollars for extinguishment of the aboriginal title of the Western Shoshone. Western Shoshone Identifiable Group v. United States, 40 Ind. Cl. Comm. 318 (1977). The United States Court of Claims affirmed the award and payment was made in 1979. Tempeak Band of Western Shoshone Indians v. United States, 219 Ct.Cl. 346, 593 F.2d 994 (1979). The Distribution of Judgment Funds Act, 25 U.S.C. § 1401 et seq., sets forth a procedure for distributing judgment funds. However, various individuals and groups resisted the formulation of a distribution plan. In essence, these groups argued that until they accepted payment of the judgment funds, title to the land was not extinguished and they were entitled to continue to use the land. In United States v. Dann, 470 U.S. 39 (1985), the Supreme Court held that acceptance of payment did not extinguish title, but rather, that payment of the judgment by the United States into the Treasury of the United States effectuated full settlement of all claims.

Despite this clear holding, individual Western Shoshones continued to refuse to accept payment and successfully blocked the formulation of a distribution plan. In 1997 John Duffy, Juliette Faulkner and others met with representatives of the Western Shoshones and tried to facilitate the formulation of a distribution plan. During those negotiations, the Departmental representatives told the tribal representatives that since the time limits for preparing a distribution plan under the Distribution of Judgment Funds Act had long since expired, that any plan would have to be submitted to Congress. They also advised the tribal representatives that the distribution plan could be for a 100% per capita distribution if that is what the beneficiaries desired. After becoming Area Director, I received several inquiries as to whether I would assist in working on a distribution plan. I advised the callers that I would help work on a plan if it appeared that a majority of the Western Shoshone people supported the effort. Several months later, Daisy West and I were invited to attend two hearings that were being conducted by the Western Shoshone Steering Committee. The Committee is a group of individual Western Shoshones that have organized to try and prepare a distribution plan. Members of the Committee asserted that in past meetings, a small vocal minority had succeeded in intimidating the "silent majority" into remaining silent on any distribution plan. In order to avoid this problem, the Committee arranged for two public hearings where any interested individuals could speak pro or con on the proposal to prepare a distribution plan. At the end of the meeting, a vote by sealed ballot was also conducted.

As anticipated, an articulate and vocal group protested any distribution plan claiming distributing the money was selling the land or that the payment should be considered rent and that additional money should be demanded from the United States. Others acknowledged that the Supreme Court had already decided the issue of extinguishment of title and that it was time to quit allowing a small group to thwart the distribution of the judgment monies. The vote from the two meetings was 1230 in favor of distributing the money and 53 against distribution. Thus, it is clear that an overwhelming majority of adult Western Shoshones favor distribution. Essentially, the proposal that the people voted for was a 100% per capita distribution of Docket 326-K and the establishment of a permanent education fund from Dockets 326-A(1) and 326-A(3). Inasmuch as there is no Western Shoshone Tribe, but rather, bands of Western Shoshone Indians, and that the original claim was filed on behalf of the "Western Shoshone Identifiable Group," I believe a 100% per capita distribution is appropriate in this case. A draft Bill is attached for your review. If you need additional material to support a legislative proposal please let me know. (Daisy West should have also have files on this matter.)

Attachment

cc: Superintendent, Eastern Nevada Agency



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

MAY 9 2000

Dear Mr. Speaker:

Enclosed is draft legislation, "To authorize the Use and Distribution of the Western Shoshone Judgment Funds in Docket Nos. 326-K, 326-A-1, and 326-A-3" (Dockets).

We recommend that the draft bill be referred to the appropriate Committee for consideration and that it be enacted.

IN THE INTEREST OF SAVING PAPER, I HAVE ELIMINATED THE PAGES THAT DO NOT APPLY TO THIS TESTIMONY. THE FOLLOWING IS A PART OF MY TESTIMONY.

Since then we have received letters supporting the distribution, and petitions signed by approximately 415 individuals supporting the legislative proposal. We also received six letters from Western Shoshone tribal members opposing the legislative proposal.

We are confident that the Western Shoshone want these funds distributed as quickly as possible. We also believe that the best interests of the Western Shoshone will not be served by providing additional time for successor tribes to reach a consensus on the division and distribution of the land claims funds in Docket 326-K.

Sincerely,

Assistant Secretary, Indian Affairs

The CHAIRMAN. Thank you.
Chief Yowell?

**STATEMENT OF RAYMOND YOWELL, CHIEF,
WESTERN SHOSHONE NATIONAL COUNCIL**

Mr. YOWELL. Good morning, Mr. Chairman, although it is afternoon now, and Committee members.

My name is Raymond D. Yowell, a citizen of the Western Shoshone Nation. I presently hold the office of Chief of the Western Shoshone National Council, which is the government of the Western Shoshone Nation.

Due to the limited time set for this testimony, the Western Shoshone Government has prepared this supplemental to its main opposition testimony for presentation at this hearing.

In accordance with the rules of this Committee, the required number of copies of this supplement and our opposition main testimony has been filed with the clerk of this Committee.

All the elements of our main opposition testimony are reaffirmed. We stand opposed to H.R. 884. This supplemental testimony will address and point out the events that have transpired recently in connection to the Western Shoshone territorial rights issue.

ICC Docket 326 K. The last event to happen in the overall U.S. Indian Claims Commission process is a hearing of record that was held in the territory of the Western Shoshone Nation. This hearing took place in July 1980 at Elko, Nevada. At this hearing of record the Western Shoshone asked the Federal hearing officer, "By what U.S. law did the United States acquire the territory of the Western Shoshone Nation?" Because the hearing officer could not answer the question, the Western Shoshone rejected the monetary award from the ICC, Docket 326 K, stating, "Keep your money until you [meaning the United States] can show us how you acquired our territory."

I testified at the hearing of record, and I also asked the exact same question of the hearing officer. Again, when the hearing officer could not answer my question, I also rejected the monetary award from ICC Docket 326-K. Today, 23 years later, the United States has not answered the question put to it by the Western Shoshone.

Since the hearing officer could not show how the United States acquired the territory of the Western Shoshone Nation, and since the Western Shoshone, myself included, rejected the monetary award from Docket 326 K, the Western Shoshone territory remains in the property of the Western Shoshone Nation, rightfully under Western Shoshone control and jurisdiction.

Based on this fact, Western Shoshone cattlemen, myself included, and in compliance with Article VI of the 1863 Treaty of Peace and Friendship made with the United States, stopped paying the U.S. Government for grazing our cattle on our own Western Shoshone lands. We withheld grazing fees to show the United States that there was a problem with its claimed ownership of the territory of Western Shoshone Nation. From the very start of our nonpayment for grazing our cattle on our own Western Shoshone land, the Western Shoshone stated to the U.S. Government that if it could not answer the question of how it acquired the territory of the Western Shoshone Nation, then the best way to move toward a solution would be through negotiation between our two Nations.

Confiscation of Western Shoshone Cattle. In May 2002, armed agents of the U.S. Bureau of Land Management came in the early morning hours and confiscated cattle belonging to me and to Mr. Myron Tybo. The BLM did this without answering the question first put to the Federal hearing officer at the 1980 hearing of record, "By what U.S. law did the United States acquired the territory of the Western Shoshone Nation?" In September of 2002 armed agents of the BLM came in the early morning hours and confiscated the cattle of Mary and Carrie Dann, and did so without answering the above question.

In 1924 Congress declared Indians to be citizens of the United States. If from the point of view of the U.S. Congress we are U.S. citizens, then this means that our property cannot be taken from us without a court order. But when the BLM agents were taking our cattle, we asked them if they had a court order. They said they did not have a court order and took our cattle anyway. The BLM theft of our property is a gross violation of our civil and human rights and robs us of our livelihood. It is also a violation of our 1863 Treaty vested right to be agriculturists and herdsman.

U.S. Supreme Court Ruling on U.S. v. Dann, 1985. In 1974 the United States sued two Western Shoshone sisters, Mary and Carrie Dann for trespass, the allegation being made that they were grazing their cattle on Federal public land. After going back and forth in U.S. Federal Appeals Court several times, the case reached the U.S. Supreme Court in 1984. The Supreme Court ruled that because the U.S. Secretary of the Interior had accepted the monetary award from ICC on Docket 326 K as a trustee for the Western Shoshone, the Dann sisters could not defend on the grounds of original Western Shoshone title. The U.S. Supreme Court specifically based its decision on an erroneous assumption that the ICC had filed its final report with Congress.

OSA Investigation, Docket 326 K. In 1992 the Dann sisters petitioned the Organization of American States, OAS, to look into their treatment by the United States. The Dannels were joined in the petition by the Western Shoshone IRA Reservation Tribal Councils and by the Western Shoshone National Council. In December of 2002 the OAS released its report, stating that United States, through its U.S. Indian Claims Commission process had violated the human rights of the Western Shoshone, that the ICC process lacked due process of law, and that the property rights of Western Shoshone had been ignored. The United States has to this date failed to remedy the violation put forth in the OAS report though asked by the OAS to do so.

Thus, the U.S. Supreme Court in 1985, ruling on the case, U.S. v. Dann, used an Indian Claims Commission process against the Dannels that has been found to be in violation of Western Shoshone human rights.

The Indigenous Law Institute's Finding on the ICC's Failure to File a Final Report with Congress on the Western Shoshone Case. In January of 2003 the Indigenous Law Institute issued its finding that the U.S. Indian Claims Commission failed to file a final report with Congress regarding the Western Shoshone case. Docket 326 K, Section 21 of the ICCA, Report of Commission to Congress, requires such a report in order to provide Congress with the information it needs to make an informed judgment in every case. The ILI report reveals that the Indian Commission did not complete its work as required by law. The Indian Claims Commission failed to fulfill a legally required ingredient of finality in Section 22(a) of the ICC Act. Therefore, an essential part of the statutory basis that Congress has set up for a distribution of the monies in Docket 326 K remains unfulfilled.

The Amnesty International Report. In May of 2003, Amnesty International issued its report on the Western Shoshone case, and found that violations occurred in the ICC process concerning Western Shoshone human rights. The violations were lack of due process of law, violations of Western Shoshone human rights, and violations of Western Shoshone property rights. This report gives added credibility to what the OAS and ILI reports reveal about the ICC Docket 326 K.

Recommendation. A distribution bill came before this Committee on Docket 326 K. The Committee at that time wisely rejected taking action on it by nor bringing it out of Committee. With the above referenced reports now bringing to light the major problems

with the ICC process as it pertains to the Western Shoshone territorial rights issue, we request that this Committee not take action on bill H.R. 884, but to let it die the death it deserves in Committee.

Thank you very much.

[The prepared statement of Mr. Yowell follows:]

**Statement of Raymond D. Yowell, Chief,
Western Shoshone National Council, on H.R. 884**

Good Morning Mr. Chairman and Committee Members,

My name is Raymond D. Yowell, a citizen of the Western Shoshone Nation. I presently hold the office of Chief of the Western Shoshone National Council, which is the Government of the Western Shoshone Nation.

Due to the limited time set for this testimony, the Western Shoshone Government has prepared this supplement to its Main Opposition Testimony for presentation at this hearing.

In accordance with the rules of this Committee, the required number of copies of this Supplement and our Main Opposition Testimony has been filed with the Chief Clerk of this Committee.

All the elements of our Main Testimony are reaffirmed. We stand opposed to H.R. 884. This Supplemental Testimony will address and point out events that have transpired recently in connection with the Western Shoshone Territorial issue.

I.C.C. Docket 326-K

The last event to happen in the overall U.S. Indian Claims Commission process is a hearing of record that was held in the Territory of the Western Shoshone Nation. This hearing took place in July of 1980 at "Elko, Nevada." At this hearing of record, the Western Shoshone asked the Federal hearing officer, "By what U.S. law did the United States acquire the Territory of the Western Shoshone Nation?" Because the hearing officer could not answer the question, the Western Shoshone rejected the monetary award from the I.C.C., Docket 326-K, stating, "Keep your money until you [meaning, the United States] can show us how you acquired our Territory."

I testified at the hearing of record, and I also asked the exact same question of the hearing officer. Again, when the hearing officer could not answer my question, I also rejected the monetary award from I.C.C. Docket 326-K. Today, twenty three years later, the United States has not answered the question put to it by the Western Shoshone.

Since the hearing officer could not show how the United States acquired the Territory of the Western Shoshone Nation, and since the Western Shoshone, myself included, rejected the monetary award from Docket 326-K, the Western Shoshone Territory remains the property of the Western Shoshone Nation, rightfully under Western Shoshone control and jurisdiction.

Based on this fact, Western Shoshone cattlemen, myself included, and in compliance with Article 6 of the 1863 Treaty of Peace and Friendship made with the United States, stopped paying the United States Government for grazing our cattle on Western Shoshone lands. We withheld grazing fees to show the United States that there was a problem with its claimed ownership to the Territory of the Western Shoshone Nation. From the very start of our non-payment for grazing our cattle on our own Western Shoshone land, the Western Shoshone stated to the United States Government that if it could not answer the question of how it acquired the Territory of the Western Shoshone Nation, then the best way to move towards a solution would be through negotiations between our two Nations.

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U.S. Supreme Ruling On U.S. v. Dann (1985)

In 1974, the United States sued two Western Shoshone sisters, Mary and Carrie Dann, for trespass, the allegation being made that they were grazing their cattle on Federal "public land." After going back and forth in the U.S. Federal Appeals Courts several times, the case reached the U.S. Supreme Court in 1984. The Supreme Court ruled that because the U.S. Secretary of the Interior had accepted the monetary award from the I.C.C. on Docket 326-K as the "trustee" for the Western Shoshone, the Dann sisters could not defend on the grounds of original Western Shoshone Title. The U.S. Supreme Court specifically based its decision on an erroneous assumption that the I.C.C. had filed its final report with Congress.

OAS Investigation of Docket 326-K

In 1992, the Dann sisters petitioned the Organization of American States (O.A.S.) to look into their treatment by the United States. The Danns were joined in their petition by Western Shoshone I.R.A. Reservation Tribal Councils, and by the Western Shoshone National Council. In December of 2002, the O.A.S. released its report, stating that the United States—through the U.S. Indian Claims Commission process—had violated the human right of the Western Shoshone, that the I.C.C. process lacked due process of law, and that the property rights of the Western Shoshone have been ignored. The United States Government has to this date failed to remedy the violations put forth in the O.A.S. report, though asked by the O.A.S. to do so.

Thus, the U.S. Supreme Court in 1985, ruling on the case, U.S. v. Dann, used an Indian Claims Commission process against the Danns that has been found to be in violation of Western Shoshone human rights.

The Indigenous Law Institute's Finding on the I.C.C.'s Failure to File A Final Report With Congress in the Western Shoshone Case

In January of 2003, the Indigenous Law Institute, issued its finding that the U.S. Indian Claims Commission failed to file a final report with Congress regarding the Western Shoshone case, Docket 326-K. Section 21 of the I.C.C.A, "Report of Commission to Congress" requires such a report in order to provide Congress with the information it needs to make an informed judgment in every case. The I.L.I. report reveals that the Indian Commission did not complete its work as required by law. The Indian Claims Commission failed to fulfill a legally required ingredient of finality in Section 22(a) of the I.C.C. Act. Therefore, an essential part of the statutory basis that Congress set up for a distribution of the monies in Docket 326-K remains unfulfilled.

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In May of 2003, Amnesty International issued its report on the Western Shoshone case, and, found that violations occurred in the I.C.C. process concerning Western Shoshone human rights. The violations were lack of due process of law, violations of Western Shoshone human rights, and violations of Western Shoshone property rights. This report gives added credibility to what the O.A.S. and I.L.I. reports reveal about the I.C.C. Docket 326-K.

Recommendation

A distribution bill came before this Committee on Docket 326-K. The Committee at that time wisely rejected taking action on it by not bringing it out of Committee. With the above referenced reports now bringing to light the major problems with the I.C.C. process as it pertains to the Western Shoshone Territorial rights issue, we request that this Committee not take action on bill H.R. 884, but let it die the death it deserves in Committee.

The CHAIRMAN. Thank you. Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman, and again, I have submitted a formal statement for the record on Bill 884 that we have before us today, and I apologize to my witnesses here for being absent, but other duties kept me away at the time I could have introduced you. And I wanted to welcome you and the other Nevadans that are here today to Washington, D.C. to witness and

partake in this Committee hearing, and it is certainly a pleasure to have you before us, and I certainly am very proud to see such great representation here before us today.

Mr. Chairman, I would like to submit for the record of the Committee, several petitions that have been signed by a number of Shoshone Indians, Western Shoshone Indians, that would have been here, but they have submitted their petition in support of 884, and I would like copies of these petitions to be admitted into the record if I could.

The CHAIRMAN. Without objection.
[The information referred to follows:]

Submitted in record
by Cong. Gibbons

PEOPLE'S PETITION

We the undersigned, beneficiaries of the Indian Claims Commission Court Award Docket 326K, would like to inform the Congressional Committee, and all other entities involved, that Tom Luebben and his associates, do not speak for or represent the majority Western Shoshone Indians of Nevada.

It has been common knowledge for the past 26 years Mr. Luebben has had a fight with the United States Government in support of the Dann sister's land issues, which went to court three times and lost each time. Mr. Luebben's Position in Washington, D.C., is highly recognized his influence on the congressional delegates has escalated. Mr. Luebben has become very wealthy, over all these years, by using us Shoshones in Nevada for his personal gain. Mr. Luebben's position to stop distribution will go on indefinitely if we do not speak up now and let the Congressional Committee be aware we are the beneficiaries not him or his constituents.

This petition is one of many needed to bring this important matter to an end for us Shoshone people. The government to government relationship has failed in the last 26 years this is why it is now a people's issue.

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Pauline Hooper Pauline Hooper	PO Box 124 Fallon, NV 89407	775-423-7263
Helia Biechum Astor Helia Biechum Astor	3245 Hicks Rd. Fallon, NV 89406	775-423-3966
Marim Gayle Milas	8415 Mission Rd Fallon, NV	775 423-2536
Betty Robinson Betty Robinson	5373 Applewood Cir Fallon, NV 89406	(775) 423-2815
Nevada Inversen Nevada Inversen	7760 Doi Dicitata Fallon, NV	775 423-4590
Mary M. McGettrick	750 E Stillwater Dr. AV.	(775) 423-9391
Shalona Morgan Shalona Morgan	152 Venturacci Lane, Fallon, NV	89406 77521-1001
JAMES BOFFIS	P.O. Box 207 Fallon NV	
Florence Mullett	P.O. Box 412 WARD, NV 89403	775-5320
Opheha H. Quater	1011 Reservation Road Fallon, Nevada	89406
Rachina Williams	7616 Mission Rd Fallon NV	89406
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 Lucinda Garcia-Ruiz 125 W. Front St. #20 Fallon, Nev. 775-217-9156
 Jennifer Grand HC 61 Box 6196 Austin, NV 89310
 Nancy Valdez HC 61 Box 6196 Austin, NV 89310
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 Evelyn Brown 725 East Front St. #1 Fallon, NV 89406-423-3762
 Jillian Yessith Jillian Yessith 7811 Old Doughty Fallon, NV 89406 423-9382
 Charlotte Decker 825 McLean St. Fallon, Nevada 89406 423-3762
 Christine J. O'Connell 650 N. Maine #203 Fallon, Nev. 89406
 Thomas Miller 701 W. Nevada, Duckwater, Nev. 89316
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 Steven Mike Steven Mike P.O. Box 4452 Duckwater, Nev.
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 Orpha Hooper-George, 940 Laidla Street, Fallon, NV 89406
 TERRY, Eddie, McCAIN - 25 Reservation Road Reno, NV
 Eleanor Calvin 1842 Reservation Road Reno, NV 89502
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 Rosalyn Brady 3201 Longlake St. Elko, Nev. 89801
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Print & Sign Name:	Address:	Phone Number:
<i>Deanna Murray</i>	<i>1000 R. Mills Hwy / Humboldt</i>	<i>709 891-0727</i>
<i>Richard James Pika</i>	<i>P.O. Box 822 Minden NV 89423</i>	<i>887-0460</i>
<i>Madone Jim</i>	<i>P.O. Box 1000 Gardnerville NV</i>	
MICHAEL HANSON	Michael Hanson P.O. Box 702	HOME PINE CA. 75-423-0354
<i>Kore Burns</i>	<i>7400 Golden Eagle Ct. Fallon NV 89406</i>	<i>75-423-0354</i>
<i>Gene G. Malins</i>	<i>7387 Golden Eagle Ct. Fallon, Nev. 89406</i>	<i>423-4017</i>

Mr. GIBBONS. Mr. Chairman, this is indeed an issue which is long overdue, as I said earlier. And these witnesses—and I think the eloquence of Laura Piffero is certainly to be commended because she put in very clear perspective historical presentation of the whole process the that this thing has gone through over the last two decades, and certainly it is one which I think is timely.

It is one which we have to deal with. If we don't deal with it, the money will serve no one. It will sit in an account, a trust fund, and do no good for anyone. I apologize for the double negatives. It will not do anyone any good. We want the bill.

Ms. Piffero, let me say that I have looked over your technical suggestions for the language. I have no problem with working on the bill between now and when it is submitted to the Committee to make those technical corrections that you addressed in your opening statement as well. We will work with you on that to make sure that we take them into consideration.

Ms. PIFFERO. Thank you.

Mr. GIBBONS. I guess I don't know what else to ask, because I think everything that has been said needed to have been said, and I think the record is clear.

I would only turn basically to Chief Yowell and maybe ask him a question. It relates to the Western Shoshone National Council that you represent. My question is, is that an elected body by the Shoshone Nation?

Mr. YOWELL. No, it is not. It is the entity that signed the Treaty of 1963 that has continued from that time down to today's times.

Mr. GIBBONS. So what you are saying is that the rest of the Shoshone Nation over the years has had no elected effect on the membership of this national council?

Mr. YOWELL. Elections came to be the way that tribal councils were appointed based upon the Indian Organization Act entities that were established in Shoshone territory in 1938. From that time forward—

Mr. GIBBONS. I am not trying to undermine you in any way, but I want to just get some clarity out here. The Western Shoshone National Council, is it a registered nonprofit organization in the State of Nevada?

Mr. YOWELL. It is not.

Mr. GIBBONS. It is not?

Mr. YOWELL. No.

Mr. GIBBONS. Is it an IRA sanctioned council as contrasted to a reservation council?

Mr. YOWELL. It is not. It represents a nation based upon the treaty that it signed with United States.

Mr. GIBBONS. And how many members of the Shoshone tribes that are in Nevada, whether you consider the Te-Moak, the Fallon Western Shoshones, Duckvalley, how many of all of those members do you have in your organization?

Mr. YOWELL. None of the ones you mentioned. The Ely tribe belongs. The Tempe Nation belong, the traditional cattlemen from South Fork Reservation belongs, the Dann family belongs, the Great Basin Western Shoshone belong.

Mr. GIBBONS. And how many members would that be total?

Mr. YOWELL. We haven't computed the membership of those entities.

Mr. GIBBONS. Could you guess?

Mr. YOWELL. Not at this time. I couldn't give an accurate figure.

Mr. GIBBONS. Would either Mr. Ike or Ms. Piffero have an answer to that? Would you have an estimate?

Mr. IKE. I don't have any privilege to their membership.

Mr. GIBBONS. Mr. Chairman, I see that my time has expired, and I will certainly hope that members look at this carefully. It does not waive any rights under any treaty organization or treaties that were established, and certainly I think it is time to look favorably upon this part of our cultural history and reward these people with the judgment that the courts have set out for many, many years ago, and it is time to put that money to good use and benefit these people, and I would hope that every member could support this bill.

Thank you.

The CHAIRMAN. Thank you, Mr. Gibbons. Mr. Pallone?

Mr. PALLONE. I will try to be brief, Mr. Chairman. I don't really have a position on the bill at this point, but I have to say that, you know, I am—two things are sort of weighing on me. One is the fact that I really don't like the idea of Nations having to give up land and, you know, getting some kind of payment in lieu of whatever land claims they might have. So that weighs very strongly on—you know, on the one hand, not being supportive of this type of a settlement.

On the other hand, because of the fact that Nations are sovereign, they should be able to do what they please. In other words, if you have a vote and it is legitimate, there is no reason why you shouldn't be able to do what you think is best. That is the process.

I guess my concern is, and I have heard some of the testimony and read some of the testimony—I wasn't here for the whole panel—everyone seems to be—on the one hand, Mr. Gibbons and, I guess, the chairman are suggesting that if this land settlement goes through and the bill is approved, that you could still claim title to certain lands. On the other hand, Chief Yowell seems to suggest that that is not the case, you know, that somehow the settlement, if it is granted, will be a contributing factor, if not total factor, toward extinguishing any rights to the land.

So I guess I am a little confused. If either of you could just respond to that—what makes you think that this settlement does or does not preclude you from making claims to the land, and how successful you could be if this settlement and this legislation went through? If I could just ask the chairman and the chief that, quickly. I know you have probably answered already, but just to give me a little more information.

You believe that, if this bill goes through, that essentially the land claims are extinguished, which is why you are not in favor of it in part. Is that true?

Mr. YOWELL. Yes, basically that is true. You have to go back to the rejection of the claim to begin with, in 1980, when the question was asked of the hearing officer, by what law did the United States acquire the territory of Western Shoshone. And these laws are explained fully in the main testimony that we have submitted to the clerk of this Committee. That question still remains unanswered to this day. And the very fact that the Indian Claims Commission award contains the wording “per acre” means that the land is, you know—that is payment for the land. And so that is why we take the position that, if we take this award, then we have been paid for the land.

Mr. PALLONE. OK, then let me ask the chairman, now, you seem to feel that that is not the case, right? That you could still exert certain claims successfully?

Mr. IKE. I believe that, because I was in opposition to Kantovich's introduction of a bill in early 1990, and it was suggested at that particular time by Senator Inouye, to the Western Shoshone leadership, to go back to Western Shoshone country and to develop a land package. And we wanted to deal with the highest level of Government. And at that particular time, there was Secretary Babbitt who we were dealing with. We met with him in Denver, Colorado. Ample money was given to the Western Shoshone National Council for the Duckwater Tribe to initiate this process. This process only lasted about four or 5 years. It fizzled right quick. The Western Shoshones could not get together on a land issue in regard to the expansion of the Reservations. I still believe that if the Western Shoshones themselves, through their Governments, through their Tribal councils, can ask for and will receive additional land base for an expansion of their existing land base that they now have. And that is the hope that we have coming before this Committee, so that we can get that language once more introduced.

Mr. PALLONE. OK. Thank you, Mr. Chairman.

Mr. GIBBONS. Would the gentleman yield?

Mr. PALLONE. Yes, sure. I don't have time, but—

Mr. GIBBONS. I appreciate the gentleman yielding his time. The bill only deals with the distribution of a settlement from a court award. In there, in Section 2(D)(9), it says that there is no waiver of any treaty rights in the bill. So that these Tribal Nations that are subject to this settlement still retain their treaty rights as pursuant to the treaty rights of Ruby Valley that was established. So there is no waiver of any of the rights that are inclusive of Article 1 through Article 8 of that treaty.

Mr. PALLONE. And I gather there are some that would argue that the treaty rights were extinguished long ago anyway, right? I mean, I guess none of us agree with that, but that is another argument that is out there. I thank you.

The CHAIRMAN. Mr. Udall?

Mr. TOM UDALL. Thank you, Mr. Chairman. Chief Yowell, let me—just following up on this same question—let me read you part of this bill. In Section 2, paragraph A, it says—and this is not a waiver of treaty rights. It says, "Receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the 1863 Treaty of Ruby Valley, inclusive of all Articles 1 through Article 8, and shall not prevent any Western Shoshone Tribe or band or individual Shoshone Indian from pursuing other rights guaranteed by law."

How do you interpret this? If this bill doesn't preclude claims under the treaty or on other grounds, what is objectionable about the bill?

Mr. YOWELL. The very fact that this is referring to Docket 326-K that came out of the Indian Claims Commission, when that commission, which now I have stated is—that the law is incomplete—that the commission failed to file the final report with Congress. The final thing that happens in that, when the finality is

achieved—you know, had this report been issued, the finality would have been achieved—is that Section 22(a) of this Indian Claims Commission Act kicks in and that bars any further—since this is based on a land issue—any further land claims to be brought forward.

Mr. TOM UDALL. So as I understand your position, you believe the ruling and the money, if that is taken, will actually extinguish the claims and that you feel that to proceed in that manner would extinguish the claims and there is no guarantee of any future land settlement?

Mr. YOWELL. Yes. It would make it very difficult for, you know, Western Shoshone to bring that issue forward again.

Mr. TOM UDALL. Now, one of the parts to this that is a little bit troubling to me—and I think there is a history out there when we do these ballots, and everybody talks about the ballots. The options that were laid before people in terms of the ballot was basically saying here is a big pot of money, do each of you want 30,000 of these dollars? I mean, there was no mention of a land settlement, there was no mention that this—is that correct in terms of characterizing the way the ballot was phrased? I mean, was there any mention one way or another about the history, anything like that?

Mr. YOWELL. That is my understanding. I did not partake in that ballot or that voting process, so I didn't get to see the ballot itself. But it is my general understanding that it is only for money—you know, the choice is given only for money.

Mr. TOM UDALL. Ms. Piffero, I would like to ask you the question, because I have a copy of one of the ballots here and it says the ballot presents the following two options: Yes, I am in favor of 100 percent per capita claims payment to persons who have at least one-quarter degree of Western Shoshone blood; No, I am not in favor of receiving any claims payment. Is that basically what the ballot was?

Ms. PIFFERO. Yes, it was.

Mr. TOM UDALL. So when people were balloting, the issue before them was, You have a big pot of money and do you want it? There was never any discussion about land claims or land settlements or the history that this has had over the last 25 years and how that might impact on the tribe. Is that correct?

Ms. PIFFERO. Right. And I would agree with that statement. However, that has been—the lack of communication between our people and the truth is making amends. That is true. There has been a lot of miscommunication, I believe. But in these last few years, that is closing. They are being told the correct information by the correct people. And so, yes, that was in fact a valid statement in the beginning; however, that is progressing, going forward in a positive manner so that they are aware.

Mr. TOM UDALL. Chairman Ike, do you foresee a process that is in place today and that is moving along for having a land settlement take place and you receiving a larger share of land? I mean, several administrations—the first Bush administration, I know, had negotiations going, the Clinton administration had negotiations going. My understanding Bush 2, there are no negotiations. I mean, what are—because you mentioned in your statement, you

know, this doesn't preclude a settlement, what is the process you see reaching some kind of land settlement?

Mr. IKE. That was the beginning of the process which you had just asked in regard to the monetary distribution. Because initially, when the Western Shoshone Tribal Governments were asked to participate in planning for the expansion of their reservations, those negotiations fell apart.

With that being done and that not proceeding, the Western Shoshones claim committee that was developed initiated a different distribution package. And these things were discussed in many meetings in regard to the overall package and the procedure. And there were three questions on that ballot, and the ballot was very straightforward in regard to exactly what this process was going to be all about.

I still do believe that there is a process available for the Western Shoshones, through Congress, to expand our land base. Those plans are still in place. All we have to do is go back, regenerate those plans, introduce them, and then we can move forward.

Mr. TOM UDALL. Thank you, Mr. Chairman. I see my time is out. If possible, I would like to ask the sponsor just an issue about this land settlement, but I can do it—

Mr. GIBBONS, I am just—I am puzzled by the two positions we have here with the— You know, I understand the good intent of your bill in terms of getting this money out there and getting it to people. And yet at the same time, you see this tortured history of trying to negotiate a settlement and linking the two together and there being a lot of fear that if the settlement takes place, Congress will never pick up this issue again.

And I was just wondering what your perspective was on this in terms of—and the chairman's, for that matter. I mean is there a sense of coming back to this issue later on? Are we going to give some directive to the Administration to try to reach a settlement? You know, where are we on that?

Mr. GIBBONS. I think, Mr. Udall, first of all, the old saying, "Justice delayed is justice denied." And what we are trying to do with this bill is to allow for the justice to meet the needs of Western Shoshone people in the State of Nevada. And that is because the judgment that the Court ruled said that X number of dollars were to be paid to this Tribe for the taking of their land in the 1850's. There will always be the opportunity for extensions, additions, and acquisitions of new lands to be added to the existing holdings right now by the Shoshone Nations throughout Nevada.

That is a process which is ongoing, which is not the subject of this bill. It is simply one—this bill, as I said earlier, is to ensure that the money does not remain in a trust account for another 20 or 30 years while senior members of the Shoshone Nation pass away without ever receiving the benefit of what this Government took from them decades and centuries ago.

So the point is not—this bill is not the point to be the end-all solution to their needs. This bill is only directed to require the distribution of those funds which the Court had said was an award to be given to the Shoshone Nation for that taking. It has nothing to do with later rights of individual reservations or Tribes to request additional land, to negotiate with the Federal Government

for extensions and trust lands to be added to that. This would make this bill so immensely complicated and delay it so long, that I would venture to say that everyone sitting in this room will not be here by the time that was ever negotiated and agreed upon at some point in the future.

What we are trying to do is require justice to be delivered to these people today—not tomorrow, not a decade from now, not 20 years from now. That is all this bill does. And it does not restrict any of the treaty rights, as you have said by reading and quoting that part of the bill.

So the purpose, of course, is just to get the monies released and distributed, and it has nothing to do—and does not prevent later or even concurrent negotiations for additional lands for the Shoshone people.

Mr. TOM UDALL. If we can just for a second continue this colloquy. I mean, when Senator Reed—he asked that when the ballots were voted on in one of these elections, that a fact sheet be handed out. And the fact sheet said the following—and my understanding, it was handed out. “The United States Supreme Court has ruled that claims to tribal aboriginal land title were extinguished upon the payment into the U.S. Treasury of judgment funds awarded under Docket Numbers 326-K, 326-A1, 326-A1-3 by the Indian Lands Claims Commission. Accordingly, the distribution of these funds neither revives any extinguished claims nor extinguishes any existing future claims against the U.S. Government.”

So if this statement is accurate, that the judgment by the claims commission and then further approved by the Supreme Court extinguished all claims—

Mr. GIBBONS. That was, as you’ve read, the aboriginal lands. But it did not, as it said in the last statement of that paragraph, extinguish any future claims that may be brought.

Mr. TOM UDALL. Yes. No, I understand.

Mr. GIBBONS. I don’t understand where you are coming from. We are looking at an historic area that has been taken by the United States. And this bill only pays them \$142 million for that, which has been sent out by the Court to be distributed.

Mr. TOM UDALL. I think where—I am trying to understand where the other side is coming from. And I think where they are coming from is saying since this has extinguished all these claims in the past and there isn’t anything going on in the future in terms of existing claims or future claims, why don’t we try to settle this in one package? I think that has been the basic position that has come up. Why can’t we resolve this all at once? And I think there will be—it just, you know, it is just my opinion, I think there will be a strong movement that, once the funds have been paid out, that the Congress is done with this and will never come back to it. And so if there is an issue out there, it seems like there might be an argument for packaging it in one.

But you are very close to this issue and spent a lot more time with it than I have, and I just wanted to raise this with you and the chairman. Thank you, Mr. Chairman, very much for allowing me to carry on this colloquy with my colleague here.

The CHAIRMAN. Thank you. I have no problem and I would be more than happy to work with Mr. Gibbons and Mr. Porter and the

Tribe in trying to come up with some kind of an equitable expansion in terms of what reservation lands should be there. And as Mr. Gibbons knows, I don't think there is any reason for the Federal Government to own 90 percent of his State or more. And anything that could help rectify that situation, I am in favor of doing. And if there is a way to put this together and do that, I am all for doing that.

But having said that, I think it is crazy to have \$140 million sitting in an account somewhere that belongs to these people and not give it to them. I think that we are dealing with two separate issues here. And the one issue I think we should take care of immediately; the second issue I believe is—we are going to need a lot of help from you folks to do this and come up with an equitable solution for that. And as I've said, I am more than happy to work with you in order to make that happen.

I think most of these issues have been dragging on for way too many years. And, you know, to hear Mr. Yarrow talk about this court case and how far it goes back and all this, I mean, you realize that this started 10 years before I was born, this whole thing. And that is just, to me, is unacceptable. So we need to get the money to the people it rightfully belongs to. We need to come up with a solution in terms of what lands should be tribal lands and get that done with. And I think that would, I think, help satisfy some of the concerns that are out there. I think they are legitimate. We do need to take care of that, and I support you in that. But at the same time, I do believe that we need to deal with this money that is in this judgment fund. It is not doing anybody any good where it is right now. We all know that. So I think we just need to deal with that. But I am more than happy to work with all of you to help solve this problem in as short a period of time as we possibly can.

But I thank you very much for your testimony. I think it was very valuable to the members of the Committee to have you in, and I know it is not easy for you to come back. But I do appreciate you doing this.

The members of the Committee will have additional questions. Several of them were unable to stay because of the late hour, but those questions will be submitted to you in writing. If you could answer those in a timely manner so that they can be included in the hearing record, I would appreciate that.

If there is no further business before the Committee, I again thank the members of the Committee and our witnesses for this hearing. The Committee stands adjourned.

[Whereupon, at 1:54 p.m., the Committee was adjourned.]

