S. HRG. 110–469

S. 1080, H.R. 2120, S. 2494, H.R. 2963, AND S. 531

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

S. 1080, THE CROW TRIBE LAND RESTORATION ACT

H.R. 2120, TO DIRECT THE SECRETARY OF THE INTERIOR TO PROCLAIM AS RESERVATION FOR THE BENEFIT OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS A PARCEL OF LAND NOW HELD IN TRUST BY THE UNITED STATES FOR THAT INDIAN TRIBE

S. 2494, THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION SETTLEMENT ACT

H.R. 2963, THE PECHANGA BAND OF Luiseño MISSION INDIANS LAND TRANSFER ACT OF 2007

S. 531, A BILL TO REPEAL SECTION 10(f) OF PUBLIC LAW 93–531, COMMONLY KNOWN AS THE "BENNETT FREEZE"

MAY 15, 2008

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S. 1080, H.R. 2120, S. 2494, H.R. 2963, AND S. 531

Thursday, May 15, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The Chairman. The Committee will come to order.

Good morning, and welcome to the Indian Affairs Committee hearing on five bills dealing with various land issues on specific Indian tribes. These issues are not new; most of the bills were introduced in prior Congresses. So we wanted to do a hearing this morning so that we might proceed with the legislation.

We want to learn the views of all the interested parties on this legislation. Today the Committee will hear views on five bills. First is S. 2494, the Spokane Tribe of Indians Grand Coulee Dam Equitable Compensation Settlement Act. This bill would provide compensation to the Spokane Tribe for the use of tribal lands to generate hydroelectric power by the Grand Coulee Dam.

S. 1080, the Crow Tribe Land Restoration Act, this bill would provide the Crow Tribe with the tools to address the problem of land fractionation within the reservation.

S. 2963 is a bill to transfer certain lands to the Pechanga Band of Mission Indians.

S. 2120 is a bill that would direct the Secretary of the Interior to proclaim certain lands of the Sault Ste. Marie Tribe as part of the Tribe's reservation.

S. 531 is a bill to repeal the Bennett Freeze provision in the Navajo-Hopi Lands Settlement Act.

Today we will hear the views of tribes affected by these bills as well as the views of the Department of Interior. I encourage any other interested parties who are not on the witness list to submit written comments to the Committee. The hearing record will remain open for 14 days from today's date for those submissions.

With that, I welcome the witnesses. I know the tribal leaders have traveled far to be with us today. We greatly appreciate your willingness to testify. We have a rather full agenda today, so I ask that you limit your oral testimony to five minutes. Your entire written statement will be made a part of the permanent record.

I would note that the Senate will begin a series of votes at 11 o'clock, in an hour and a half, and I expect the Committee will be done with its business by about that time.

Again, I want to welcome all of you here. The first panel includes Mr. Jerry Gidner, Director of the Bureau of Indian Affairs, United States Department of the Interior. Mr. Gidner, welcome. You may proceed.

STATEMENT OF JERRY GIDNER, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. GIDNER. Good morning, Chairman Dorgan, Vice Chairman Murkowski, members of the Committee. Because some of the tribal leaders need to leave to catch a plane soon, I am going to testify first about the bills regarding Spokane and Crow, so that those chairmen can leave who need to.

Regarding S. 2494, to provide equitable compensation to the Spokane regarding Grand Coulee Dam, the Department opposes this bill. We have worked with the Spokane Tribe over several years on this issue and believe that negotiations to correct several serious issues should continue.

We have several concerns with the bill. The first is that the bill as written envisions the use of appropriated funds to pay the tribe and we have not budgeted for the use of those funds. It also requires the transfer of land to the Spokane Tribe, which was not something that occurred in a similar claim that was settled for the Colville Tribe.

But maybe more importantly, we don't believe the Spokane Tribe has brought forth a legal claim that would justify a settlement. So we do not believe the legislation is currently justified as a settlement of a claim that we believe does not exist at this time.

If there is a transfer of land, we believe it should not happen until there is an agreement between the tribe and the Government regarding the continued management of the Grand Coulee Dam, Lake Roosevelt and the Columbia Basin project. We believe that those issues should be resolved before any transfer of land occurs.

Turning to the Crow Bill, the Department supports the goals of this bill and supports the general idea of how it would be done, essentially loaned to the Tribe to purchase fractionated land and then repay the Government. We have concerns about the exact mechanism and timing set forth in the bill, so we cannot support it at this time. We would like to continue working with the Committee and the Tribe on resolving those mechanisms to satisfy the concerns.

With that, I will just conclude my testimony on those two bills.

The CHAIRMAN. Thank you, Mr. Gidner. We will call you back when the two witnesses who have to leave, leave, Mr. Venne and Mr. Sherwood, because of travel arrangement and airplane flights.

I want to ask Mr. Venne, you have heard the testimony of Mr. Gidner, you might wish to respond to that. I will ask you to go first, but let me ask Senator Tester to provide a proper introduction. Mr. Venne, you are becoming a fixture here. I believe you have testified a number of times before this Committee. We welcome you today. Senator Tester, would you like to introduce Mr. Venne?

Senator TESTER. Yes, I would consider it a great honor.

Chairman Venne is Chairman of the Crow Tribe in the southern part of the State of Montana, the largest land mass, reservation in Montana. He is an individual who has shown great leadership to the Crow People for a good number of years now. I met Carl when I was in the State Senate. I think he is a man of great vision and common sense. So when Carl talks to me about bills such as the Crow Land Restoration Act, with the kind of passion that he has for that, it makes me sit up and take notice.

With that, Carl, it is very good to have you here. I know you are a very busy man and I really appreciate you taking time out of your schedule to come to Washington, D.C. Thank you.

The CHAIRMAN. Chairman Venne, let me thank you for being a gracious host when I visited your reservation, as well. It was a pleasure to do so. You may proceed.

STATEMENT OF HON. CARL VENNE, CHAIRMAN, CROW NATION

Mr. VENNE. Good morning. My name is Carl Venne. I have served as the Chairman of the Crow Nation since 2002.

On behalf of the Crow Nation, I want to thank Chairman Dorgan and the members of the Senate Committee on Indian Affairs for holding this hearing on S. 1080, the Crow Tribal Land Restoration Act. I would also like to thank Senator Max Baucus and Senator Jon Tester for their sponsorship of this important bill.

S. 1080 directly addresses the serious problems of the loss of our homelands through fractionation, allotment and tax foreclosure. Furthermore, the Crow Nation land base remains at risk with the potential loss of as much as a half a million acres or more. The underlying cause of our land base problems is derived from the Federal policy of allotment, which deleted the Indian land base nationwide by about two-thirds from 1887 to 1934, from 138 million to 48 million acres. Over a 70-year period, Crow territory was reduced by 92 percent to its current 2.2 million acres.

How this all came about was the Crow Tribe is the only tribe who settled the Cobell case. We were in negotiations with the Department of Justice. I think the biggest problem that Interior is facing and it is costing them more is the fractionation problem in Indian Country. Ten percent of all fractionated lands in these United States is on the Crow Reservation.

For the last three years I have been working with Jim Cason and Abe Haskill to come up with this bill. I can respond to Interior today by saying, this bill, we sat down and worked it out with Interior before. To object to it now, I don't understand that. It is just alone to the Tribe in the first place.

Let me give you an example of how poor my Tribe is. We have a 47 percent unemployment rate. We are the fourth poorest county in this Nation. And Interior, it is costing them more and more and more to take care of lands on reservation. So when I sat down with Interior, it was to solve this problem. Why is there a Cobell case today? It is because of this problem, because of poor management by Interior itself. I strongly believe that the Crow Tribe can manage our own lands for ourselves. I have done that. For the last four years, Interior has leased tribal lands, they have received about $4

million a year. I decided, no, I am going to do it. Today we get over $10 million a year because of the Tribe managing its own lands.

From $1.65 an acre to $55 an acre, that is the difference. That is why I want to, I need your help to do something like this, to retain our lands. It is so important to preserve my Tribe, my people. This Nation preserves wild horses in the Pryor Mountains. I think as we are the First People of these United States, we need to protect our homeland, to secure the homeland for the future of our kids, our grandkids and them that are not born yet. That is how important it is to my Tribe.

It is just asking for a loan to purchase these lands. To me it is fairly simple. But how important is it? You know, God doesn't make any more land. I want to keep ours. I want to increase it.

Today, $50 million to $60 million is derived from the farm land that we have. If I had $60 million to $50 million today and I owned these lands, I wouldn't need to be coming to Washington, D.C. and asking for money. We as a tribe would become self-sufficient. That is our goal; to become self-sufficient, for us to manage it ourselves and not the Federal Government to manage our lands. Give me a chance to make my own mistakes. Give me a chance to reap the benefits of these lands.

We as a tribe have given and given and given our lands. Now I want that to stop for my tribe.

Thank you, Senator.

[The prepared statement of Mr. Venne follows:]

PREPARED STATEMENT OF HON. CARL VENNE, CHAIRMAN, CROW NATION

I. Introduction

Good morning. My name is Carl Venne and I have served as the Chairman of the Crow Nation since the year 2002. On behalf of the Crow Nation (Apsaalooke), I want to thank Chairman Dorgan and the members of the Senate Committee on Indian Affairs for holding this Hearing on S. 1080, the Crow Tribe Land Restoration Act. I would also like to thank Senators Max Baucus and Jon Tester for their sponsorship of this important bill.

S. 1080 directly addresses the serious problems of the loss of our homelands through fractionation, allotment and tax foreclosures. Furthermore, the Crow Nation land base remains at risk, with the potential loss of as much as a half a million or more acres in the near future. The underlying cause of our land base problems is derived from the federal policy of allotment, which depleted the Indian land base nationwide by about two thirds from 1887 to 1934 (from 138 to 48 million acres). Over a 70-year period, Crow territory was reduced by 92 percent to its current 2.2 million acre area.

Because of allotment and federal probate of Indian property (with many Indians dying without wills), the phenomenon of fractionated land ownership arose—where several (sometimes hundreds of) owners might have varying interests in a single parcel. Similarly, allotment, fractionation and the loss of the tribal land base collectively resulted in checkerboard ownership of reservation lands, giving rise to overlapping governmental authority in Indian country (federal, state, tribal and local). Consequently, tribes with heavily allotted lands are faced with a situation where they must spend valuable resources trying to protect their remaining lands.

On the other hand, other individuals (non-Indian) owning lands within the reservation (and almost everywhere outside of Indian country) have a relatively easy time protecting and making use of the land they own. Selling land to outsiders for less than its value further reduces the land base and the options for tribal citizens, and federal attempts to remediate these problems have been unsuccessful. Importantly, then, S. 1080 provides a mechanism by which the Crow Nation can repurchase significant lands and interests in land and to benefit once again from the economic potential of these lands, as was the intention of their being originally set aside for the Crow Nation and its citizens.

II. Tribal Land Base, Marshall Trilogy and Problems

Overview

Nothing is more important to Indian people than their land. Having a protected land base, active and healthy citizens, and defined political boundaries is essential to a tribe's sovereignty and existence as a government. When Chief Justice John Marshall and the U.S. Supreme Court decided the early cases and controversies that provided the foundation of federal Indian law, he reflected that even under a doctrine of conquest and incorporation, where possible, "humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers."

Even where Europeans saw Indians as mere occupants of their lands, they were to be protected in that occupancy. A close reading of the Marshall Trilogy, the foundational Indian law cases, reveals that the U.S. Supreme Court would have supported a more complete view of property rights of tribes when they settled peacefully and allied with the United States, as did the Crow Nation from its earliest contacts. Moreover, two important but less often cited U.S. Supreme Court decisions have recognized and declared that "Indian lands are as sacred as the fee simple of whites." *See Mitchel v. U.S.,* 34 U.S. 711 (1835) (holding that the United States was obligated to respect existing Seminole property rights when it gained possession of Florida). Similarly, in *U.S. v. Shoshone Tribes of Wind River Reservation in Wyoming,* 304 U.S. 111 (1938), the Court found that "the tribe's right of occupancy was incapable of alienation or of being held otherwise than in common, *that right is as sacred and as securely safeguarded as if fee simple title*," and that the beneficial use for such rights as minerals and timber was vested in the Tribe and not in the United States.

Until 1970, the era of self-determination, federal Indian policy decimated the land base and the subsistence possibilities of Indian tribes and their citizens. During the reservation era (1830s to 1880s), from the idea of Indian Territory (Oklahoma today) to other strategies of containment, the United States made treaties with Indian nations that asked them to concede vast sections of their homelands in return for specific payments and obligations on the part of the United States. Importantly, those agreements almost universally contained a guarantee of the protected use and enjoyment of the remaining reservation lands.

After the reservation era, federal Indian policy shifted to allotment—breaking up the tribal land base by allotting smaller subsections of tribal lands to individual Indians. The overarching policy was to break Indians from their culture, dismantle tribal governments, and assimilate Indians into mainstream American culture. The allotment policy was declared by Congress in the *General Allotment Act* (Dawes Allotment and Severalty Act) of 1887. However, hundreds of specific allotment acts were passed by Congress over the subsequent forty years that specifically applied to particular reservations. One of these specific pieces of legislation was the 1920 Crow Allotment Act.

Even when passed, the Dawes Act was controversial. The motivation behind the policy came from the confluence of western settler colonialism and white northern liberal progressivism, a powerful phenomenon described by President Theodore Roosevelt in his 1901 *State of the Union Address* as a "mighty pulverizing engine to break up the tribal mass". One of the most vocal opponents of the allotment policy was George W. Manypenny, the Commissioner of Indian Affairs who was responsible for early allotments as part of the many treaties he negotiated with Indian tribes. Arguing against allotment as a federal policy, he assessed his earlier work: "Had I known then, as I know now, what would result from those treaties, I would be compelled to admit that I had committed a high crime."

By 1928, the *Meriam Report* declared the federal allotment policy to be one of the most disastrous federal policies of all time. During discussions leading up to the *Indian Reorganization Act* of 1934, one congressman explained the fractionating effects of allotment in this fashion:

> "It is in the case of the inherited allotments, however, that the administrative costs become incredible. . .. On allotted reservations, numerous cases exist where the shares of each individual heir from lease money may be 1 cent a month. Or one heir may own minute fractional shares in 30 or 40 different allotments. The cost of leasing, bookkeeping, and distributing the proceeds in many cases far exceeds the total income. The Indians and the Indian Service personnel are thus trapped in a meaningless system of minute partition in which all thought of the possible use of land to satisfy human needs is lost in

a mathematical haze of bookkeeping." 78 Cong.Rec. 11728 (1934), cited in *Hodel v. Irving,* 481 U.S. 704 (U.S.S.D. 1987).

In 1934, Congress expressly repudiated the allotment policy with passage of the *Indian Reorganization Act.* Despite this action by Congress, the current U.S. Supreme Court repeatedly cites allotment as the source for Congressional intent to justify further erosion of tribal governance, and simultaneous enhancement of state and local authority, over the remaining reservation land base.

Today, we have to live with the detrimental impacts of poor decisions of previous federal policymakers. First, decisions were made to remove the Indians from their homelands in the east and place them in confined areas in the northern and southern Midwest. Second, federal policymakers decided to confine Indian tribes to certain reservation lands and repeatedly sought land cessions to allow for non-Indian settlement. Third, Congress decided to break up the remaining land base with allotment. Finally, Congress terminated its relationship with over 100 Indian tribes and simply subjected their remaining assets to state and local control, with a less than fair market value payment.

Fractionation

Throughout Indian country, land fractionation has become a problem of unimaginable proportions—touching upon almost every area related to land within the reservation. One serious consequence of fractionation is that the federal government's trust responsibility toward Indian people has been let to lapse. Lease payments on trust lands are paid into federal accounts (Individual Indian Money Accounts) of individual tribal citizens, under the administration of the United States. In *Cobell,* a primary issue is centered upon the loss and other mismanagement of these fractionated interests, funds, and accounts. In some cases, some tribal citizens have seen their interests disappear altogether while under the care of those who are supposed to protect them.

Federal law defines highly fractionated land as land for which a single parcel has 50 or more owners, with no single owner owning more than 10 percent of that land, or land that has 100 or more co-owners of undivided interests. 25 U.S.C. § 1201. For instance, imagine that you owned a piece of land with 50 or more other people, some of whom you did not know and others who were very closely related to you. Only when you place yourself within this position can you begin to picture how difficult every transaction is under such circumstances and you can feel a small sense of what fractionation has done. At any moment in time, it is likely that some of those fractionated interests would be in the process of being probated, further reducing any chance of economic viability.

Another example also demonstrates serious practical problems with land in Indian country. A common issue in land ownership on Indian reservations is that someone owns a house that is on a home site on a larger piece of land (e.g., two acres of land within a hundred and sixty acres of land). Even if the home has been built in an agreed upon place, it is possible that the land belongs to dozens of other people. If the home's ownership follows the land, as is often legally the case, then the question of who might inherit that home is an extremely complex one. A piece of land that might support eighty home sites may have none because financing is unavailable under such circumstances and the puzzle of ownership cannot be solved.

Similarly, what if this parcel of land is completely surrounded by land owned by other individuals and some of those owners want to lease it to the neighboring land owners to farm? What if some of the owners want to allow an energy company to purchase a right-of-way for a pipeline or electric line across their property? Some of the shares involved are worth fractions of a penny, and yet those owners have rights in the lands. What if you needed the agreement of 30 other co-owners, and the approval of a federal agency as well, to conduct any business with regard to your land? This regime is not tribal or communal ownership but a chimera created by federal policy.

In 1983, Congress passed the *Indian Land Consolidation Act* (ILCA) to address fractionation. Under the ILCA, tribes could work with the approval of the Secretary of the Interior to eliminate fractional interests and consolidate tribal landholdings. In two later cases, various provisions of the ILCA that would appropriate small interests without owner consent were struck down as unconstitutional and those provisions were later amended by Congress. In sum, the continuing onslaught on tribal lands represents the fundamental betrayal of federal responsibility toward the first Americans—Indian tribes and their citizens—and yet there has been little and ineffective response to the concerns of the large land based tribes that suffer the most from fractionation issues.

III. History of the Crow Indian Reservation

Even though fractionation is a national problem, Indian nations have different histories and unique experiences. Many Eastern tribes were dispossessed or lost their lands well before the Reservation Era, while other tribes were terminated in the 1950s and 1960s and had (some continuing) to seek federal recognition and restoration of their lands. This is one reason the *Indian Land Consolidation Act* has not had much success—one size definitely does not fit all. Some Indian nations with a relatively large land base were not allotted; while others have had their whole reservations broken into allotments. For this reason, federal legislation must be tailored to individual tribes or small groups of tribes.

Treaties and Allotment

After the Ft. Laramie Treaty of May 7, 1868, wherein the Crow Nation reserved 8 million acres out of 38 million acres designated as its lands in an earlier treaty in 1851, a number of acts provided for the allotment of Crow lands. Those arguing for the allotment and opening of the Crow Indian Reservation to outsiders in the nineteenth and twentieth centuries performed a grotesque kind of algebra. They determined the needs of individual tribal members and the best way to make the Reservation's most valuable lands into so-called surplus lands, which were often sold to outsiders.

In 1919, prior to the 1920 Allotment Act, there were already 2,453 allotments, consisting of 482,584 acres. In discussions leading up to the 1920 Crow Allotment Act, Crow representatives repeatedly stressed their desire to keep and protect their lands and to make their own decisions. Therefore, as part of the 1920 Act, Congress expressly promised to limit other outside interests from swallowing up Crow land. In Section 2 of the 1920 Act, the Crow obtained a provision that limited outsiders from buying large sections of Crow land.

According to this provision, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation who already owned at least 640 acres of agricultural or 1,280 acres of grazing land within the Crow Reservation. Further, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation that, with the conveyance, would own more than 1,280 acres of agricultural or 1,920 acres of grazing land. A conveyance of Crow land exceeding these restrictions was considered void and the grantee was guilty of a misdemeanor, punishable by a $5,000 fine and/or 6 months in jail.

Since passage of the 1920 Act, the Crow Nation's federal trustees failed to enforce Section 2 of the statute and enforcement continues to be non-existent. Today, approximately one third of the acreage of the Reservation is owned in violation of the 1920 Allotment Act. By 1935, there were 5,507 allotments, consisting of 2,054,055 acres (218,136 acres were alienated by 1935). Eventually all but the sections of the Pryor and Bighorn Mountains on the Reservation were allotted, a total of over 2 million acres by 1935 in a reservation that had been reduced by cession to approximately 2.2 million acres. Approximately 700,000 acres of the Crow Reservation, or almost one third of the land mass of the Reservation, are presently owned by non-Indians in violation of Section 2 of the 1920 Crow Allotment Act.

The Crow Nation has sought, through a number of means, to have its rights enforced but justice has not been served. In the most important case on Crow allotment, the Crow Nation sought relief against companies that owned large sections of land (45,000 acres and 140,000 acres, respectively). In *Crow Tribe of Indians v. Campbell Farming Corp.,* 31 F.3d 768 (9th Cir. 1994), the Ninth Circuit Court of Appeals held that the 1920 Crow Allotment Act did not afford the Tribe a cause of action; the Supreme Court denied certiorari in 1995. All of these lands still have titles clouded by their Section 2 status, and their situation has become more complicated over time.

Needless to say, failed federal policies and statutes that eviscerated the land base of the Crow Indian Reservation in this matter are historic and ongoing violations of the treaty relationship between the Crow Nation and the United States. Moreover, on an individual and collective group basis, even as Indians were being criticized for not making the most of their agricultural lands, their opportunity to do so was being taken from them along with the lands themselves. Perhaps the non-Indian public believed that Crow Indians could not farm; reality, however, directly contradicted the public's misperception.

Livestock and Agriculture

As J.D. Pearson found in her work on building reservation economies, already in 1886, Agent Henry Williamson reported that livestock was providing most of the income for the Crow and that they owned more than 1,900 head of cattle. Early in the twentieth century, federal officials worked to break up successful community

gardens at Crow because they preferred individual farmers. In 1900, with substantial portions of the Big Horn irrigation ditch dug by Crow workers, Crow farmers milled almost half a million pounds of flour as well as wheat, oats, and hay to feed the reservation. As the irrigation system expanded, however, Crows found themselves out of work as, despite promises of tribal preference in employment on the irrigation projects, both the jobs and the resources that went with them were offered to others.

As with other tribes early in the twentieth century, Crow citizens made successful efforts at agricultural pursuits. Reports of the Secretary of the Interior for the Fiscal Year Ending June 15, 1915, showed that 69.7 percent of the able men of Crow were farmers and ranchers, 379 men total. By 1916, the Crow Nation had the largest horse herd in the world and a cattle herd of over 30,000 head. *The Crow Nation was already agriculturally self-sufficient (the professed federal goal of allotment) before Congress mandated the 1920 Crow Allotment Act.* Thus, Crow allotment actually undermined Crow self-sufficiency within their own lands.

Competency and Leasing Crow Lands

Leasing is another area in which allotment and fractionation have added to problems Crow citizens must overcome to benefit from their own lands. Lands held in trust for individual Indians often earn money for their owners by being leased to others for grazing or agricultural use, a practice subject to extreme abuse through the years. In their efforts to assert some control over their own lands, Crow representatives fought to get statutes passed that affirmed the right of individual Indian landowners to approve their own lease rates. A 1926 amendment to the 1920 Crow Allotment act allowed "competent" tribal citizens to make their leases for five year periods without agency approval. Several more amendments were passed because of lessee abuse—e.g., some lessees would provide small future payments to impoverished landowners to control land for increasingly extended periods of time, effectively gaining the land for themselves for almost nothing.

In 1947, the Indian competency provisions extended from the original allottees to include their heirs. At this time, on the eve of the federal termination era, tribal representatives and congressional advocates had to fight once more to prevent the Crow Reservation from being taken out of trust altogether. The final language affirmed the right of individual competent Crow Indians to approve their own leases. Yet today, fractionation has perverted this intent because the common definition of a "competent" lease at Crow is one having fewer than five owners, and the leases for lands with more than five owners must still be approved by the BIA. The overall control of the leasing of Crow lands rests not with the Crow Nation, its citizens, or even the BIA, but rather with outside leasing companies that continue to dominate the business.

Important Example of Current Problems with Leasing

The Crow competent lease acts were intended to help Crows but instead the acts appear to have helped non-Indian residents of the Crow Reservation. One especially egregious example (the case is still ongoing) will illustrate fundamental problems with leasing individual Crow lands. Our Chief Legal Counsel, Donald Laverdure, is by definition a Crow competent landowner (only he and his sister, both enrolled Crow citizens, own a 320 acre allotment) and can therefore lease his land without BIA approval. Over 5 years ago, Mr. Laverdure sought to renegotiate his competent lease with a third party leasing agent (who represents a consortium of farm families and corporations against individual Crow Indians) from 1950s rates to modern lease rates.

The leasing agent claimed that the lessee could not afford to increase rates and simply sought to renew the 50-year old rates. After repeated attempts to negotiate, Mr. Laverdure decided not renew his lease and instead applied to the local Hardin office of the U.S. Department of Agriculture to become eligible to receive drought assistance grants and crop rotation grants (he had decided to let the land lay idle because of overgrazing and lack of crop rotation and the potential grants would be the equivalent of one-half of past lease rentals from his former lessee). At a meeting, Mr. Laverdure was informed by a local USDA employee and her supervisor that his competent Crow Indian land had been leased by the BIA without his notice or consent.

Upon investigation, Laverdure found that one of the USDA employees was possibly related, by marriage, to the office manager of the leasing company. In addition, Laverdure discovered that the acting BIA superintendent, Mrs. Davey Jean Stewart, had exercised unilateral authority and granted an office lease of his own Crow competent allotment to the existing lessee, without his notice or permission. Undoubtedly, this action violates federal law—the Crow competent leasing statutes and fed-

eral regulations. Even though Laverdure pursued administrative relief within the BIA for several years, he did not receive a reply, written or verbal, until 2 years after the office lease had been granted in violation of federal law.

Laverdure received a written reply from Mrs. Stewart stating that she was exercising her BIA trust duties (on behalf of the entire trust land area, not just the specific allotment at issue) in renewing the 50-year old lease rates to the existing lessees. She said that her trust duties demanded that she consider all interests, farming and agricultural, and therefore could not follow Laverdure's own wishes with respect to his own land. Mr. Laverdure and his sister are still pursuing administrative and legal remedies after 5 years, and still appear to have no relief in sight.

Sadly, Laverdure's situation is not unique or isolated. I have been informed by several other individual Crow Indians that they have faced similar problems. This is an independent reason why my administration strongly feels that this Bill, S. 1080, would go a long way toward correcting these injustices (Crow Nation would take over administrative duties of Crow land in lieu of the BIA). As the Crow Nation purchases fractionated interests and Section 2 lands and regulates Crow leases, it will restore control and individual autonomy over lands belonging to the Tribe and its citizens.

Fractionation and Probate

In generations of restricted ownership, the land interests of individual Crows have further fractionated until the Crow Reservation is the third most fractionated reservation in the nation. Recent statistics show 91 tracts at Crow that have over two hundred owners, as well as an overall average of 42 owners per tract. This high degree of fractionation reduces the value of the lands outright, makes effective use by the owners impossible, especially frustrates the interests of minority owners, and results in prohibitive administrative costs and serious risks of injustice for any transaction.

While Crow was approved for a model project under the *Indian Land Consolidation Act,* progress has been very slow, resulting in the purchase of only a few hundred interests out of hundreds of thousands. The pilot program demonstrated a willingness among nearly all individual owners to sell their fractionated interests, but did not make significant progress toward consolidating the interests under tribal ownership.

Fractionation concerns have also dominated probate reforms under the *American Indian Probate Reform Act.* In the early stages of these reforms, Crow and other tribes have been faced with additional burdens: (i) communicating the constant changes in law, not including tribal probate codes because Interior had not approved a model code; and (ii) providing unfunded estate planning assistance to individual Crows. The latter burden has become especially important because the Bureau of Indian Affairs simply stopped providing estate planning assistance. In addition, the Department of Interior has been ineffective in trying to overcome huge deficiencies in probate backlogs because many files are missing or out of date and the interests at issue are often fractionated.

Cumulative Impact on Crow Reservation Land Ownership

Today, the Crow Reservation encompasses 2,266,271 acres of lands within its exterior boundaries. 534,000 acres are owned by the Tribe in trust. 1,038,000 acres are individually owned trust lands. 700,000 acres are owned in fee by non-Indians. As recognized by the U.S. Supreme Court in *Montana v. U.S.,* 450 U.S. 544, 548 (1981), the statistical land ownership resulting from the above described legal history was: 52 percent Crow allotments; 17 percent Crow Nation trust land; 28 percent non-Indian fee land; 2 percent State of Montana fee land; and 1 percent federal government land.

According to more recent Bureau of Land Management Reports, the land statistics have shifted slightly: 45 percent Crow allotments; 20 percent Crow Nation trust land; and 35 percent non-Indian fee land. In sum, the pattern of surface ownership generally is "checkerboard" with interspersed Crow Nation trust and fee lands, Crow allotments and non-Indian fee lands. The statistics show limited success of the Crow Nation in reacquiring lost lands, but the reality is a much larger pattern of continued land loss.

Jurisdiction and Modern Problems

Allotment and the subsequent transfer of many parcels into fee lands, as well as the seizure of reservation lands for non-Indian homesteads, has created the infamous "checkerboard" pattern of criminal and civil jurisdiction. Outside of reservation boundaries, different parcels of land are owned by different owners; yet those owners do not escape the jurisdiction of the geographic sovereign. On reservations where the pattern of ownership is now almost randomly distributed between trust

and fee parcels, tribal jurisdiction has been constantly intruded upon in such a fashion as to make tribal governance over the reservation almost impossible.

Tribes are frustrated in their ability to zone reservation lands, to assess taxes to fund government programs and services, to enforce their own laws, and even to provide public safety. The definition of "Indian Country" in 18 U.S.C. 1151 provides a clear definition that includes rights-of-way and allotments even after they have passed into fee, yet this statute is frequently ignored.

This checkerboard problem has interfered with Crow's ability to govern its own reservation in a myriad of ways. In perhaps the most problematic of all Indian law cases, *Montana v. U.S.,* 450 U.S. 544 (1981), the Tribe's attempts to regulate fishing on its own reservation were met with well-orchestrated efforts from outsiders to limit tribal sovereignty. Although the Supreme Court provided exceptions to its overall rule that Tribes do not have jurisdiction over non-Indians on fee lands, it is the general rule that is remembered and the exceptions have been interpreted so narrowly as to be almost impossible to meet.

For example, in *Atkinson Trading Co. v. Shirley,* 532 U.S. 645 (2001), the Navajo Nation's ability to assess a hotel occupancy tax on a non-Indian hotel and guests within its reservation boundaries was struck down under the general rule in *Montana.* Similarly, in *Big Horn County Elec. Co-op., Inc. v. Adams,* 219 F. 3d 944 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that the Crow Tribe was not justified in imposing a 3 percent ad valorem tax on rights-of-way used by an electric utility for transmission and distribution (the majority of consumers are Crow Indians). Only in Indian country do rights-of-way escape the jurisdiction of the geographic sovereign.

Similarly, in *Montana v. Crow Tribe of Indians,* 523 U.S. 696 (1998), a case in the courts for two decades that dealt with the consequences of double taxation, state and tribal, on the Crow Tribe's own coal from its own reservation, the U.S. Supreme Court struck down most of the relief sought by the Tribe, which simply asked for its coal severance and gross proceed taxes (which the Department of Interior had erroneously barred from several years) that were improperly paid to the State of Montana. When the Crow Tribe tried to assess a resort tax on businesses within the Crow Reservation, that tax was struck down even in the bankruptcy proceeding of one of those businesses because it was operated by a nonmember on fee land. *In re Haines,* 245 B.R. 401 (D. Mont., 2000).

Rather than start from a position that an Indian Nation's control over its own Reservation is paramount and exceptions to tribal jurisdiction must be limited, the Supreme Court in recent years has gone out of its way to protect non-Indian fee ownership and then to extend the fee context by analogy to rights-of-way and other situations on the reservation. The Court has even begun to reverse the historic discussion and to use the evils of checkerboard jurisdiction as an argument against Indian ownership. This approach shows a clear and present threat to tribal survival and the need for immediate measures to protect tribal territory and jurisdiction through consolidation and land acquisition.

IV. U.S. Senate Bill 1080, Crow Tribe Land Restoration Act

S. 1080 was specifically crafted to address the aforementioned problems. In the work leading up to a previous version of the bill (S. 1501), we held public meetings to make sure that there was no serious opposition to the actual provisions of the bill, and that there were no outstanding budget scoring issues. The bill provides a loan (of up to $380,000,000) to the Tribe to purchase Reservation lands and interests in lands from willing sellers. Purchased lands will be kept in trust or transferred into trust and administered by the Tribe, so that the Tribe can benefit from the economic potential of these lands. The lands will be made inalienable, so that the Tribe's land base will remain secure.

Repayments will be made from the earnings of the lands themselves. Research done when the BIA average payment per acre for fractionated land was $4.28 an acre, subject to further loss from administrative costs, shows that as that land approaches consolidated ownership, it will approach a higher value. Section 2 lands rented at $20.00, almost more than four times as much. Estimates showed that the likely value of the fractionated land after purchase by the Tribe would be $7.16 an acre. At nearly one million acres of fractionated lands, there would be the potential for three million dollars a year just in additional revenue to the system from the increased value of the land.

Senate Bill 1080 has a number of significant advantages.

- It Reduces Fractionation

The federal government is unable to manage these interests and, in many cases, has lost track of the funds they generate for holders of Individual Indian Money accounts (see cause of action and litigation by plaintiffs in Cobell in case against the

federal government). Administering fractionated land interests is not the most efficient or useful exercise of the federal government's fiduciary duty to tribes and individual Indians. It appears that the Act can pay for itself by simply removing the costs of administering fractionated interests at the federal level.

• It Restores the Crow Nation's Land Base

At least two purposes of setting aside reservation lands for Indians included the provision of a secure homeland and the possibility of economic self-sufficiency through agricultural pursuits. Tribal land provides a home for tribal citizens, a basis for tribal sovereignty, and a means of earning funds necessary for survival. Where reservation lands are lost to other owners, tribes have the worst possible situation—having to watch others benefit from the lands intended for Indians, while being unable to assert meaningful jurisdiction over lands within their own reservations. Restoration of the land base has a whole range of secondary effects that contribute to the health and welfare of the Crow Nation and its residents.

• It Attempts to Solve 1920 Crow Allotment Act, Section 2 Problems

The Crow Nation's Section 2 cause of action was preserved from the Tribe's settlement of its Norton trust claims. On agreeable terms, S. 1080 could provide a workable solution to the Tribe's outstanding claim for the lands lost when the United States failed to enforce Section 2. The bill will save litigation costs, potential damages in this matter, and clear title to Crow lands.

• It Effectuates the Crow Nation's Right of First Refusal

The United States government recognizes the need for tribes to be able to regain lost lands and to protect and preserve lands passing from individual citizens. Tribes possess the right of first refusal when individual tribal citizens wish to sell their trust lands, a trend that continues due to ongoing hardship and the inability of individual owners to overcome the historic obstacles placed in the way of their ownership. At present, the Crow Nation stands to lose hundreds of thousands of more acres from its reservation unless it is able to exercise its right of first refusal and keep these lands for the benefit of the Crow Nation and its citizens. Other potential purchasers often fight Crow jurisdiction within its own reservation and that leaves all parties with serious issues concerning overlapping tribal, federal, state and local government jurisdiction.

• The Potential Land Purchases Will Pay for Themselves

Particularly as costs continue to increase, there are some challenges to repayment. But through repurchase, irrigating more, keeping land in its current uses or even reclaiming land for agricultural purposes, the Tribe will be able to add to the earnings of program lands. We have done extensive research into the costs of servicing debt for land repurchase and the earning potential of the land, and are comfortable with the outlook of this program under tribal management.

Funds earned in excess of what is needed to make loan payments can nonetheless be used to add to the land base and further pay down the loans. The bill also provides a necessary five million dollar yearly appropriation for administrative costs in implementing the project and undertaking tribal management of the acquired lands.

• Additional Costs or Harms Are Insignificant

Although some fee lands may be returned to trust status in a successful land acquisition program, the collection of state taxes from these lands is quite minimal and, overall, the Crow Nation provides more services to Bighorn County than revenue or services it receives from the County. The services and secondary economic benefits provided to the County from the Crow Nation's successful use of S. 1080 lands will provide a net benefit to the County. The Nation will not have to leverage other resources or use other tribal assets.

• All Sales Are Voluntary

Because the Crow Nation's program will be the purchase of interests from willing sellers, the Nation is not forcing or demanding the return of ancient homelands.

V. A Federal Legislative Solution for a Specific Problem

Some legislation may work for all tribes, but Indian policy, geography, and different tribal cultures and histories have left tribes in different situations. S. 1080 is designed largely to alleviate the particular consequences of land loss and fractionated ownership within the Crow Reservation. However, solving land problems at Crow will go a long way toward solving fractionation and related problems throughout the United States because one-tenth of the land administered by the Bureau of Indian Affairs, as trustee for individual Indians, is at Crow.

When the Crow Nation is able to solve its land problems and repay the funds loaned under S. 1080, it will be able to use future funds earned on its lands for its

own future needs, thus saving federal dollars. By lowering federal monies spent in administering fractionated and other Crow lands, the overall federal responsibility will be reduced because the Crow Nation and its citizens will become self-sufficient. As such, BIA land assistance can be concentrated upon elsewhere in Indian country.

The fact is that Indian tribes have had many different experiences with allotment and land alienation struck different tribes and regions differently. Crow has over two million acres of allotted land, second only to the Oglala Lakota at Pine Ridge. ILCA intended for tribes to develop individual programs and therefore this Bill, S. 1080, is a specific legislative effort to accomplish what ILCA has not. Crow's actual needs based on allotment—both the extent of allotment and fractionation and the amount of allotted land on the present Reservation, as well as the other issues addressed in this testimony—are some of the most severe in the nation. Crow is also unique in the quality of lands available for repurchase and will be able to continue agricultural uses and even reclaim lands to make repayment a realistic option.

The Crow Nation, by itself, had almost twice as much land allotted as nineteen tribes in Washington combined and almost the same amount in alienation. In Oklahoma, over nineteen million acres of land were allotted and most of that total, over sixteen million acres, were completely alienated from the Tribes. Besides the moral wrongs with land loss, the GAA (Dawes Act) of 1887 occurred during a period of federalization and today's effects in Indian country amply demonstrate the error in trying to create an Indian policy that treated tribes without respect for their different cultures and histories.

Other Indian nations have their own unique stories, which constitute in part the government-to-government relationship, and have needs that must be met on their own. If you look at the recent history of Indian legislation, you will see that there are many bills that address the needs of individual tribes on recognition, water, and land claims, honoring their individual leaders, responding to specific historical wrongs. Thus, this Bill, S. 1080, may not fit the needs of the Indian Nations in Oklahoma or Washington, or the Ute Mountain Utes and Navajos with lands that were not allotted. No single legislative act could meet the diverse needs of these varied histories.

However, the Crow Nation's unique situation is shaped by its own people and culture, by the particularities of federal Indian policy and history, and by the failure of its trustees to enforce such laws as the Crow competent lease act and Section 2 of the 1920 Crow Allotment Act. S. 1080 is designed to meet the very specific needs on the Crow Indian Reservation in the most efficient way possible.

VI. Conclusion

The Crow Tribe has always been an ally of the United States. At one point in the history the United States, the federal government awarded more land north of the Yellowstone River to its allies, the Crows, in appreciation for their support. Despite being a strategic ally (like some other Indian nations), the federal government changed its mind and simply took the land away. Further, even though the land of the Little Bighorn Battlefield was and continues to be within the Crow Indian Reservation, the Crow Nation continues to be treated as a bystander with private landowners buying up parcels to preserve and expand the Battlefield Memorial without any thought or permission provided by the Crow Nation.

Other individuals that own former Crow Nation land, both on and off the Crow Reservation, continue to receive annual federal grants and subsidies—without which they would be unsuccessful at keeping the land. In contrast, Crow tribal requests to participate in federal programs are often met with opposition. Users of Battlefield Memorial site and the Bighorn Canyon Recreation Area often trespass and recklessly harm Crow tribal lands and the most sacred sites without respect, and federal agencies refuse to cooperate with our wishes to protect our homeland and our rights.

It is time for a change. This Bill, S. 1080, is an important step in the right direction and it will provide a mechanism for the Crow Nation to right many wrongs. S. 1080 can be a model for other tribes but only if they believe that they can adapt its central purpose to fulfill their own particular needs. From our perspective, passage and implementation of S. 1080 will begin to heal old wounds and restore the honor that existed in our original, but broken, treaty relationship between our two nations, the Crow and the United States.

We know that Justice Black was right when he said, "Great nations, like great men, should keep their word." We have kept our word and we simply ask that you do the same. S. 1080 is a Bill that has minimal, if no, risk to the United States but is a Bill that can go a long way toward restoring the federal promise that exists between our great nations. Thank you for your attention and I would be happy to answer any questions.

The CHAIRMAN. Chairman Venne, thank you very much. We appreciate your testimony.

Next we will hear from the Honorable Rick Sherwood, Chairman of the Spokane Tribe of Indians. Mr. Sherwood, thank you for being with us.

STATEMENT OF HON. RICHARD SHERWOOD, CHAIRMAN, SPOKANE TRIBE OF INDIANS

Mr. SHERWOOD. Thank you, Mr. Chairman and members of the Committee. My name is Richard Sherwood, I am Chairman of the Spokane Tribe of Indians.

I very much appreciate the opportunity to appear before the Senate Committee on Indian Affairs to testify on S. 2494. I would also like to thank Senator Cantwell and Senator Murray for the introduction of this bill.

Today I am here on behalf of the Spokane Tribe to ask for your help, as representatives of the United States of America. I ask that you act on behalf of the United States to finally treat the Spokane Tribe fairly and honorably for the injury to our tribe and reservation caused by the Grand Coulee project.

My testimony today summarizes my written statement for the record and the critical need for this important legislation. We will also be providing photographs to show some of the devastating effects that Grand Coulee Dam operations have on our reservation.

The Tribe has been struggling since an agreement with the United States in 1877 to secure the boundaries of the Spokane Reservation. Our reservation was formed by executive order in 1881, with 155,000 acres. Today we have 143,000 acres held by individuals and tribal trust property, 91 percent ownership of the reservation. That shows the importance that the reservation land has to the Spokane Tribe. In 1877, our ancestors and leaders of the past fought very, very hard for both the rivers, the Spokane River and the Columbia River, to be part of our boundaries. In the 1930s, due to the Grand Coulee project, those lands were taken away. I think for the ancestors that fought so hard for that, that is why we are here today. We are fighting the same fight that they fought in the 1870s, to try to get back control of those lands.

So when we hear that the Colville settlement didn't have a land component to it, at the same time, the Spokane Tribe is looking at 39 percent of what the Colvilles received. That was the initial thing we brought to the table. So through negotiations with everybody, everybody came back to the Tribe and said, you know, 39 percent, that is just too much money, we have to come up with a solution. So after careful consideration from today's council and past councils, we decided we would come up with something creative. We decided that we would go after land that was rightfully ours to begin with.

So what the Spokane Tribe has done is actually gone with 29 percent of what the Colvilles settled for and added the original boundaries back, to try to get the original boundaries back to trust. Then we hear how the Spokane Tribe doesn't have a legal claim. This may be true, but we have been promised and promised and promised since the 1930s that the Spokane Tribe would be taken care of, that we would make this right.

So in 1967, the Spokane Tribe settled its claims. In 1951, neither the Spokane Tribe nor the Colville Tribe filed claims on Coulee. The U.S. was negotiating with both tribes.

The Colvilles went to the Indian Claims Commission to amend and add the Coulee claims in 1975. The Spokane Tribe had no claim to amend at that point, we settled in 1967.

In the 1994 Colville hearing, the Department of Justice stated on the record that the Colville Tribe had no legal claim, only a moral claim. We are in the same situation, minus the fact that in 1975, w didn't have a claim to amend.

This has had a devastating impact on the Spokane Tribe from day one when they flooded our boundaries. It has taken the life away from the Spokane Tribe. We have always been a river people. To this day, we rely heavily on the river. It has taken away our salmon, it has taken away our culture, it has taken away our religion. Everything that the Spokane Tribe stood for was within that river, and we don't have that today. We will never get that back. There is no amount of money in this world that will ever return what we have lost.

I can't stress the importance of what this can do. This will help with our unmet governmental needs, health care, fire protection, police protection. So it is not just about the dollars and cents, it is about trying to make, to right a wrong. I think it is an important thing to understand that we have been dealing with this for 80 plus years now. And promise after promise, and here it is 2008 and I am fighting the same fight that my ancestors fought, that my great-grandpa sat here as a chairman and fought. So I ask you today, you have the opportunity to finally correct that wrong and make it right.

With that, I thank you and appreciate the time you have given me.

[The prepared statement of Mr. Sherwood follows:]

PREPARED STATEMENT OF HON. RICHARD SHERWOOD, CHAIRMAN, SPOKANE TRIBE OF INDIANS

Thank you Mr. Chairman and members of the Committee. My name is Richard Sherwood. I am Chairman of the Spokane Tribe of Indians. I very much appreciate the opportunity to appear before the Senate Committee on Indian Affairs to testify on S. 2494. Accompanying me are Gregory Abrahamson, Vice Chairman of the Tribe, and Howard Funke, our attorney. They are available for questions.

Summary

I am here today on behalf of the Spokane Tribe to ask for your help as representatives of the United States of America. I ask that you act on behalf of the United States to finally treat the Spokane Tribe fairly and honorably for the injury to our Tribe and Reservation caused by the Grand Coulee Project. My testimony today summarizes my written statement for the record and the critical need for this important legislation. We are also providing photographs for the record which illustrate some of the annual effects Grand Coulee Dam operations have on our Reservation. The Spokane Tribe has been struggling to protect our Reservation since an agreement with the United States in 1877. To understand this settlement it must be viewed in an historic context. As is fitting and proper for that struggle spanning one hundred and thirty (130) years, we have submitted a very lengthy and detailed statement herein.

Grand Coulee's waters flooded the lands of two adjoining Indian reservations that held great economic, cultural and spiritual significance. Ours is one of those reservations. The other is the Colville Tribes Reservation.

Our life, culture, economy and religion centered around the rivers. We were river people. We were fishing people. We depended heavily on the rivers and the historic

salmon runs they brought to us. We were known by our neighboring tribes as the Salmon Eaters. The Spokane River—which was named after our people—was and is the center of our world. We called it the "Path of Life." President Rutherford B. Hayes in 1881 recognized the importance and significance of the rivers by expressly including the entire adjacent riverbeds of the Spokane and Columbia Rivers within our Reservation. But the Spokane and Columbia Rivers are now beneath Grand Coulee's waters. Today our best lands and fishing sites lie at the bottom of Lake Roosevelt.

The proposed Legislation is designed to end a lengthy chapter in American history, in which the United States and American citizens reaped tremendous rewards at the expense of the Spokane Tribe and the Colville Confederated Tribes. The severe devastation wrought upon both tribes was unprecedented. And though the effected land areas held by the Spokane Tribe were roughly only 40 percent of that held by the Colville Tribes, a portion of the Colville's salmon fishery continues to reach their Reservation, while the Spokane's was lost entirely. Additionally, the Spokanes lost forever a prime site on the Spokane River that it could have developed for hydropower. Ultimately, both Tribes suffered severely. We are greatly impacted by the operation of Grand Coulee Dam each and every year.

At the Grand Coulee Dam's infancy, the United States acknowledged and supported its need to fairly and honorably address the related losses to be suffered by both the Spokane Tribe as well as the Colville Tribes. Yet the Colvilles, in 1994, secured a settlement with the United States, while the Spokane claims are still unresolved. The United States has all but ignored its trust obligation to the Spokane Tribe. The legislation represents a final settlement of the Spokane Tribe's claims, and the following briefly describes the need for the United States to finally treat the Spokane people fairly and honorably in resolving this matter.

Historical Context

From time immemorial, the Spokane River has been at the heart of the Spokane territory.

In 1877, an agreement was negotiated between the United States and the Spokane to reserve for the Tribe a portion of its aboriginal lands approximating the boundaries of the present Spokane Indian Reservation.

On January 18, 1881, President Rutherford B. Hayes issued the relevant Executive Order, and with exacting language, expressly included the Spokane and Columbia Rivers within the Spokane Indian Reservation.

Under section 10(e) of the Federal Power Act (16 U.S.C. 803(e)), when licenses are issued involving tribal land within an Indian reservation, a reasonable annual charge shall be fixed for the use of the land, subject to the approval of the Indian tribe having jurisdiction over the land. Had a state or a private entity developed the site, the Spokane Tribe would have been entitled to a reasonable annual charge for the use of its land. The Federal Government is not subject to licensing under the Federal Power Act.

Numerous statements made by federal officials acknowledged the need for the Spokane Tribe to receive fair compensation. In one example, William Zimmerman, Assistant Commissioner of Indian Affairs, wrote:

> "the matter of protecting these valuable Indian rights will receive active attention in connection with applications filed by the interested parties before the Federal Power Commission for the power development." Letter from William Zimmerman to Harvey Meyer, Colville Agency Superintendent, dated September 5, 1933.

A letter approved by Secretary Ickes, from Assistant Commissioner Zimmerman to Dr. Elwood Mead, Commissioner of Reclamation, stated in connection with the "rights of the Spokane Indians," that the Grand Coulee project, as proposed:

> "shows the cost of installed horsepower to be reasonable and one that could bear a reasonable annual rental in addition thereto for the Indians' land and water rights involved." Letter from William Zimmerman to Elwood Mead, dated Dec. 5, 1933.

The United States Department of Justice has recognized these promises as an undertaking of a federal obligation, which promises were made to both the Colville and Spokane Tribes.

> "The government began building the dam in the mid-1930's. A letter dated December 3, 1933, to the Supervising Engineer regarding the Grand Coulee and the power interests of the Tribes, with the approval signature of Secretary of the Interior Ickes states:

> This report should take into consideration the most valuable purpose to which the Indians' interests could be placed, including the development of hydro-electric power.
>
> We cannot too strongly impress upon you the importance of this matter to the Indians and therefore to request that it be given careful and prompt attention so as to avoid any unnecessary delay.
>
> Also, a letter dated December 5, 1933, to the Commissioner of the Bureau of Reclamation and endorsed by Interior Secretary Ickes, stated that 'it is necessary to secure additional data before we can advise you what would constitute a reasonable revenue to the Indians for the use of their lands within the [Grand Coulee] power and reservoir site areas.' And a letter dated June 4, 1935 from the Commissioner of the Bureau of Reclamation requested that additional data be secured to determine 'a reasonable revenue to the Indians for the use of their lands within the power and reservoir site areas.'"
>
> Statement of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S.2259 before the Subcomm. on Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103–943, Aug. 4, 1994, at 16).

As stated in the testimony of the Assistant Secretary for Indian Affairs, concerning the 1994 Colville Settlement legislation, approved in P.L. 103–436: "Over the next several years the Federal Government moved ahead with the construction of the Grand Coulee Dam, but somehow the promise that the Tribe would share in the benefits produced by it was not fulfilled."

Pursuant to the Act of June 29, 1940 (16 U.S.C. 835d et seq.), the Secretary paid to the Spokane Tribe, $4,700. That is the total compensation paid by the United States to the Spokane Tribe for the use of our tribal lands for the past seventy-three years.

When the waters behind the Grand Coulee Dam began to rise, the Spokane people were among the most isolated Indian tribes in the country. The Tribe's complete reliance on the Spokane and Columbia River system had remained largely intact since contact with non-Indians. That, however, would be completely and irreversibly changed forever. The backwater of the dam, Lake Roosevelt, floods significant areas of the Tribe's Reservation, including the Columbia and Spokane boundary rivers within the Reservation. A 1980 Task Force Report to Congress explains the historical context of the Tribe in relation to the Grand Coulee Dam.

> "The project was first authorized by the Rivers and Harbors Act of 1935 (49 Stat. 1028, 1039). In spite of the fact that the Act authorized the project for the purpose, among others, of 'reclamation of public lands and Indian reservations . . ..,' no hydroelectric or reclamation benefits flow to the Indians. Hardly any were employed at the project site. Indeed, the Tribes have presented evidence that even unskilled workers were recruited from non-Indian towns far away. The irrigation benefits of the project all flowed south. . ..
>
> Furthermore, the 1935 enactment made no provision for the compensation of the [Spokane and Colville] Tribes. It was not until the Act of June 29, 1940 (54 Stat. 703)—seven years after construction had begun—that Congress authorized the taking of any Colville and Spokane lands . . . Section 2 [of that Act] required the Secretary to determine the amount to be paid to the Indians as just and equitable compensation. Pursuant to this authorization the Secretary condemned thousands of acres of Indian lands, primarily for purposes of inundation by the planned reservoir.
>
> Apart from the compensation for those lands, which the Tribes claim was inadequate, no further benefits or compensation were paid to the Indians. Nothing was provided for relocation of those Indians living on the condemned lands; and tribal lands on the bed of the original Columbia River were not condemned at all. Worst of all, Grand Coulee Dam destroyed the salmon fishery from which the Tribes had sustained themselves for centuries. The salmon run played a central role in the social, religious and cultural lives of the Tribes. The great majority of the population of the Tribes lived near the Columbia and its tributaries, and many were driven from their homes when the area was flooded. While Interior Department officials were aware that the fishery would be destroyed, the technology of the time did not permit construction of a fish ladder of sufficient height to allow the salmon to bypass towering Grand Coulee Dam.
>
> The project also resulted in the influx of thousands of non-Indian workers into the area. Prior to contemplation of the project very few non-Indians lived in the region. Indeed, anthropologist Verne F. Ray, who began his field studies in

1928, reports that there were no more than a handful of white families in the vicinity of the future site of the Grand Coulee Dam, and that in 1930 the Colville and Spokane were among the most isolated Indian groups in the United States. Their aboriginal culture and economy were largely intact up to that time, little reliance having been placed on white trading posts. The subsistence economy of the Indians had continued to focus on the salmon.

Another principal aboriginal pursuit of the Colville and Spokane Indians involved the gathering of roots and berries on lands south of the rivers. That activity was largely curtailed after the construction of the project because of the influx of non-Indians on to those southern lands and because the river was widened to such an extent that crossing it became very difficult. Before the reservoir there were many places where the river could be forded. Similarly, hunting south of the river was also curtailed. Thus, the Grand Coulee project had a devastating effect on their economy and their culture." Final Report, Colville/Spokane Task Force, Directed by the Senate Committee on Appropriations in its 1976 Report on the Water and Power Public Works Appropriations Bill, S.Rep.94–505. (September, 1980).

The salmon runs were entirely and forever lost to the upstream Spokane Tribe. Further more, there existed on the Spokane River—within the Spokane Reservation—two prime dam sites the Spokane Tribe could have used for generating hydro electric power. Like the Spokanes' salmon runs, these sites were lost forever to Grand Coulee.

In the 1940 Act, Congress also directed the Secretary of the Interior to "set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes, which rights shall be subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife." 16 U.S.C. § 835(d).

In an extraordinary move, the Tribe in December, 1941, sent a delegation cross-country to meet on the issues with Commissioner John Collier. Unfortunately, the meeting took place on December 10—just three days following the bombing of Pearl Harbor. The Commissioner and his representatives committed to the Tribal delegation that they would do all they could in aid of the Tribe, but that the national priorities of war meant that redress would have to wait until its conclusion.

In 1946, the Interior Secretary designated areas within Lake Roosevelt as "Indian Zones" to fulfill the requirements of the 1940 Act's "paramount use" provisions in recognition of tribal lands inundated by Lake Roosevelt. The "Spokane Indian Zone" and the "Colville Indian Zone" were located generally within the reservations of those Tribes. The Spokane Zone also extended up the inundated Spokane River, within the Spokane Reservation, which today is known as the "Spokane Arm" of Lake Roosevelt.

Indian Claims Commission Filings

In 1946, Congress enacted the Indian Claims Commission Act. Act of August 13, 1946 (60 Stat. 1049). Pursuant to that Act, there was a five-year statute of limitations to file claims before the Commission which expired August 13, 1951. It was under the Indian Claims Commission Act that the Colvilles were able to settle their claims in 1994. And it was due to a quirk of circumstances that the Spokanes were not.

In 1951, both the Spokane Tribe and the Colville Tribes filed land claims with the Indian Claims Commission prior to the August 13, 1951 Statute of Limitations deadline. *Neither tribe filed claims before the deadline seeking compensation for the use of their lands for the production of hydropower at Grand Coulee.* Neither tribe understood, nor were advised that there would be a need to even file such claims. After all, beginning in the 1930s and then resuming through the 1970s, the historical and legal record is replete with high level agency correspondence, Solicitor's Opinions, inter-agency proposals/memoranda, Congressional findings and directives and on-going negotiations with the affected Tribes to come to agreements upon the share of revenue generated by Grand Coulee which should go to the Tribes for the use of their respective lands. The Tribes had every reason to believe that its Trustee, the United States, was, although belatedly, going to act in good faith to provide fair and honorable compensation to the Tribes for the United States' proportionate use of our Tribal resources for revenue generated by the Grand Coulee Dam.

The ICC Act imposed a duty on the Bureau of Indian Affairs to apprize the various tribes of the provisions of the Act and the need to file claims before the Commission. While the BIA was well aware of the potential claims of the Spokane Tribe to a portion of the hydropower revenues generated by Grand Coulee, there is no evi-

dence that the BIA ever advised the Tribe of such claims. As the Tribe's long-time attorney explained in 1981:

> "The writer was employed in 1955 as the Tribe's first General Counsel. The tribal leaders of 1951 were still in office. When asked why they had not filed claims for the building of Grand Coulee, the destruction of their fishery and loss of their lands, they were thunderstruck. They had no knowledge at all that they might have filed such claims. They told the writer that no one had alerted them to the possibility of such claims. They did not know that these potential claims might be governed by the Claims Commission Act. They assumed that their rights were still alive, and well they may be. The Superintendent had approached them in about 1949 with the Tri-partite agreement between the BIA, Bureau of Reclamation, and the National Parks Service for the establishment of and administration of the Indian Zones pursuant to the Act of 1940. While he got them to sign pre-written resolutions approving this agreement [so] vital to their river and lake rights, not a word was spoken of the possibility of the tribe filing claims. The deadline of August 13, 1951 was therefore allowed to pass without the claims having been filed." Memorandum of January 12, 1981 with Final Report, Colville/Spokane Task Force (September 1980).

Thus, the Spokane Tribe in 1967 settled its ICCA claims, while the expectation of fair treatment for Grand Coulee's impacts continued. Ironically, the Spokane Tribe's willingness to resolve its differences with the United States would later be used as justification for the United States' refusal to deal fairly and honorably with the Tribe.

Meanwhile, the Colvilles, who had not settled their ICCA claim, continued that litigation against the United States. In 1975, the Indian Claims Commission ruled for the first time ever that it had jurisdiction over ongoing claims as long as they were part of a continuing wrong which began before the ICCA's enactment and continued thereafter. *Navajo Tribe v. United States,* 36 Ind. Cl. Comm. 433, 434–35 (1975). Over objections by the United States, the Colvilles sought, and in 1976 obtained, permission from the Commission to amend their complaint to include for the first time their Grand Coulee claims. With new life breathed into their claims, the Colvilles pursued litigation of their amended claims to the Federal Circuit Court of Appeals, which held that the ICCA's "fair and honorable dealings" standard may serve to defeat the United States' "navigational servitude" defense. *Colville Confederated Tribes v. United States,* 964 F.2d 1102 (Fed. Cir. 1992). In light of this ruling, the United States negotiated with the Colvilles to resolve that Tribe's Grand Coulee-related claims. Unfortunately, however, because the Spokane Tribe in 1967 had acted in cooperation with the United States to settle its ICCA case, it lacked the legal leverage to force settlement.

In 1967, the Spokane Tribe settled its ICCA claims case. That was the very same year that construction of the Grand Coulee Dam third power plant containing six new generating units began. The next thirteen years witnessed a flurry of activity by the United States to address the claims of the tribes to a share of the benefits of the Grand Coulee Project.

Subsequent Negotiations—Both Tribes

In 1972, the Secretary of the Interior's Task Force began negotiation with the tribes through multiple policy, legal and technical committees to address the tribal claims. The "Secretaries Task Force" engaged the tribes on a full range of issues, including compensation, riverbed ownership and tribal jurisdiction over the inundated Indian Zones.

In 1974 the Solicitor of the Department of the Interior issued an Opinion which concluded, among other things, that the Spokane and Colville Tribes each retained ownership of the lands underlying the Columbia River and, in the case of the Spokane Tribe, the lands underlying the Spokane River. The Solicitor found the United States intent to reserve those riverbeds in the Spokane Tribe clear. The Opinion suggested that the resource interests of the Tribes were being utilized in the production of hydroelectric power at Grand Coulee.

In December 1975, the Congress directed the Secretaries of Interior and the Army to establish a Task Force and to open discussions with the tribes:

> "to determine what, if any, interests the Tribe have in such production of power at Chief Joseph and Grand Coulee Dams, and to explore ways in which the Tribe might benefit form any interest so determined." S. Rep, 94–505, Dec. 4, 1975, at 79.

While these high-level negotiations were taking place, construction of the third power plant at Grand Coulee continued. The first generating unit of six came into service in 1974.

In May of 1979, following two years of negotiations among federal agencies and the tribes, the Solicitor for Interior proposed to the Secretary of Interior a legislative settlement of the claims of the Colville Tribe and the Spokane Tribe, stating:

> "I firmly believe that a settlement in this range is a realistic and fair way of resolving this controversy. The representatives of the Departments of Energy and Army who participated on the Federal Negotiating Task Force concur. It adequately reflects the relatively weak legal position of the tribes. (If the tribes could get around the Government's defenses they conceivably could establish a case for from 15 percent to 25 percent of the power of the Grand Coulee and Chief Joseph dams.) In addition to the threat of legal liability to the federal government, there is the undeniable fact that the Colville and Spokane people have been treated shabbily throughout the 40-year history of this dispute. To this day they have received little benefit from these projects on their lands which totally destroyed their fishery (no fish ladders were included) and inalterably changed their way of life. It has been the non-Indian communities and irrigation districts who have benefited from these projects. Much reservation land remains desert, while across the river irrigated non-Indian lands bloom.
>
> I am also hopeful that this is one "pro-Indian" bill that the Washington State congressional delegation will support as a fair resolution of a sorry chapter of our history. The tribes have tried recently to cultivate support for such a settlement proposal among key members of the delegation. My understanding is that the delegation's concerns have focused on the size of a settlement award (tribal demands have referred to hundreds of millions of dollars) and a tribal proposal for allocation of a firm power supply in the 1980's an allocation which might be seen as a threat to domestic users in times of shortage." Legislative Proposal on Settlement of the Claims of the Colville and Spokane Tribes, Memorandum of Leo M. Krulitz to Eliot Cutler, May 7, 1979.

We do not know what happened to this Interior Solicitor proposal to settle the claims of both tribes. We do know that the sixth and final unit of the third power plant was completed in 1980. In that same year, the congressional Task Force completed its work. In spite of Congresses' direction, rather than determine the tribal interests involved in Grand Coulee and the benefits they might derive from those interests, for the first time in nearly 50 years of promises and negotiations with both tribes, the Task Force asserted legal arguments which the United States might use to defend against or forestall any tribal claims for a share of the hydropower generated by or the revenues derived from the Grand Coulee Project The report concluded the United States may not be required by law to provide compensation at the same time that the Project's ability to provide benefits to the United States and the region was taking a quantum leap.

The third powerhouse alone provides enough electricity to meet the combined power of the cities of Portland, Oregon and Seattle, Washington. However, its contribution to the Federal Columbia River Power System and the inter-connected electric systems serving the western United States goes far beyond the amount of hydropower that is generated.

With completion of the third powerhouse, the Grand Coulee Project was positioned to play a pivotal role in the creation of downstream hydro power benefits from releases from large Canadian storage reservoirs. Grand Coulee became the critical link between water storage facilities in the upper reaches of the Columbia River Basin and downstream generating assets. Rated at 6,809,000 kilowatts capacity, the power generating complex at Grand Coulee became the largest electric plant in the United States, third largest in the world. It now produces about 21 billion kilowatt hours annually, four times more electricity than Hoover Dam on the Colorado River, and is the least-cost power source in the region's resource stack.

In addition to power production, Grand Coulee is the key to maintaining operating flexibility and, most important, the reliability of the Federal Columbia River Power System and inter-connected systems.

Without the third power plant in particular, and the Grand Coulee Project in general, the configuration and operation of the Federal Columbia River Power System would be very different. The electric systems serving the Pacific Northwest (and western United States) would be less efficient, have much higher average system costs and be far less reliable.

In a sad twist of historical events, two tribes—each feeling the irreversible pain of Grand Coulee's devastation—found themselves on separate paths. The Colville Tribes were able to continue their legal battles with the United States through set-

tlement in the mid-1990s, while the Spokane Tribe's willingness to settle in the 1960's cost it substantial legal and political leverage in future dealings with the United States.

Continuing Recognition of the Tribe's Interests

In 1990, the federal government and the Tribes entered into the Lake Roosevelt Cooperative Management Agreement, which states that "[t]he Spokane Tribe shall manage, plan and regulate all activities, development, and uses that take place within that portion of the Reservation Zone within the Spokane Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation . . . to carry out the purposes of the Columbia Basin Project."

Litigation over the ownership of the original Spokane Riverbed resulted in a separate federal court opinion (*Washington Water Power v. F.E.R.C.,* 775 F.2d 305, 312 n. 5 (D.C. Cir. 1985)), a court order (*Spokane Tribe of Indians v. State of Washington, Washington Water Power Company and United States of America,* No. C–82–753–AAM, *Judgment and Decree Confirming Disclosure and Quieting Title to Property* (U.D. Dist. Ct., E.D. Wash., September 14, 1990)). Separate settlement agreement (*Spokane Tribe of Indians v. Washington Water Power Company,* No. C–82–AAM, *Judgment* (U.S. Dist. Ct. E.D. Wash., March 3, 1995)) all of which provide and affirm that the Spokane Tribe holds full equitable title to the original Spokane Riverbed.

In 1994 Congress passed the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103–436; 108 Stat. 4577, 103d Congress, November 2, 1994) to provide compensation to the Colville Tribes for the past and future use of reservation land in the generation of electric power at Grand Coulee Dam.

> A. For past use of the Colville Tribes' land, a payment of $53,000,000.
>
> B. For continued use of the Colville Tribes' land, annual payments of $15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project and transmission of that power by the Bonneville Power Administration.

In 1994 Congress also directed the Bonneville Power Administration, Department of Interior and the relevant federal agencies, under the "fair and honorable dealings" standard, to enter into negotiation with the Spokane Tribe to address the Tribe's comparable and equitable claims for the construction and operation of Grand Coulee Dam.

During the hearing on the Colville Settlement bill, the Spokane Tribe sought an amendment that would have waived the Indian Claims Commission Act's statute of limitations to enable the Spokane to pursue its Grand Coulee claims through litigation. In the words of then Tribal Chairman Warren Seyler, "We believe it would be unprecedented for Congress to only provide relief to one tribe and not the other when both tribes were similarly impacted." Hearing Record, Colville Tribes Grand Coulee Settlement, H.R. 4757, pp. 56–61 (August 2, 1994).

Colville Tribal leaders and the bill's Congressional sponsors asked the Spokane to withdraw the request for an amendment to waive the statute of limitations. The Spokane complied, with the understanding that good faith negotiations to reach a fair and honorable settlement with the United States would be imminent. As a result, the following statements were made in a colloquy accompanying the Colville Tribes' Grand Coulee Settlement legislation. Colloquy to Accompany S. 2259, A Bill Providing for the Settlement of the Claims of the Confederated Tribes of the Colville Reservation Concerning Their Contribution to the Production of Hydropower by the Grand Coulee Dam, and for Other Purposes.

Senator Bradley stated:

> "S. 2259 settles the claims of the Confederated Tribes of the Colville Reservation, yet the claims of the Spokane Tribe which are nearly identical in their substance, remain unsettled. The historic fishing sites and the lands of the two tribes were inundated by the Grand Coulee Project. It is clear that hydropower production and water development associated with the Project were made possible by the contributions of both tribes. Thus, I believe it is *incumbent that the United States address its obligations under the Federal Power Act to both Tribes.*"

Senator Murray stated:

> "The settlement of the claims of the Colville Tribes is long overdue. The claim, first filed by the Colville Tribes over forty years ago, is based upon the author-

ity the Congress vested in the Indian Claims Commission, which provided a five-year period during which Indian tribes could bring their claims against the United States.

Unfortunately, the Spokane Tribe did not organize its government in time to participate in the claims process.

The *fair and honorable dealings standard* established in the Indian Claims Commission Act *should clearly apply to the United States' conduct and relationship with both the Colville and Spokane Tribes.* I would urge, in the strongest possible terms, that the Department of the Interior and other relevant federal agencies enter into *negotiations with the Spokane Tribe that might lead to a fair and equitable settlement* of the tribe's claims."

Senator Inouye stated:

"*I fully support the notion that the United States has a moral obligation to address the claims of the Spokane Tribe,* and I would be pleased to join you in a letter to Interior Department Secretary Babbitt *urging that negotiations be undertaken* by the Department."

Senator Bradley added:

"Under the Federal Water Power Act, which is now referred to as the Federal Power Act, where an Indian Tribe's land contributes to power production, the licensee *must pay an annual fee to the Indian Tribe which represents the tribe's contribution to power production.* I too, would be pleased to join Senator Murray and Chairman Inouye in *urging the Interior Department and the Bonneville Power Administration to enter into negotiations with the Spokane Tribe* to address the tribe's claims."

Senator McCain stated:

I also want to join my colleagues in *urging the Department of the Interior to seize this opportunity to address the Spokane Tribe's comparable and equitable claims* for damages arising out of the inundation of their lands for the construction and operation of Grand Coulee Dam."

Thus, as the Colville Tribes' claims were being addressed, the United States Congress made clear its intent that the Spokane Tribe be treated fairly and honorably in connection with its claims for Grand Coulee damages through prompt, good faith negotiations with the Administration.

The Spokane Tribe adhered to the spirit of good faith negotiations over the next several years. While the Administration in general continued its refusal to take Congress' direction to negotiate fully a fair and honorable settlement with the Spokane Tribe, the Administration lead shifted from the Department of the Interior to the Bonneville Power Administration.

For the next six years, from 1998 to 2004, the Tribe engaged in very difficult negotiations with BPA. Finally, in 2004, the provisions of a settlement bill were arrived at in which BPA had no objections. Those provisions are contained in S. 2494.

Legislative History

Spokane Tribal acreage taken by the United States for the construction of Grand Coulee Dam equaled approximately 39 percent of Colville acreage taken for construction of the dam. The Spokane settlement is based on 39 percent of the Colville settlement. At the request of members of Congress, the payment provisions for the Spokane settlement bill were reduced to 29 percent of Colville in exchange for return of the Tribe's lands taken for the Grand Coulee Project.

Spokane Tribe settlement legislation has been introduced in the 106th, 107th, 108th, 109th and this the 110th Congress. In the 108th Congress, hearings on H.R. 1797 were held before the House Resources Subcommittee on Water and Power on October 2, 2003.

Hearings were also held on the Senate bill S. 1438, on October 2, 2003, before the Indian Affairs Committee. The bill was approved by the United States Senate on November 19, 2004. The House of Representatives adjourned late on November 20, 2004 without time to consider the Senate-passed bill.

A Spokane Settlement Bill was introduced in the 109th Congress. The House bill, H.R. 1797, was approved by the House of Representatives on July 25, 2005. In the second session of 109th Congress, in 2006, subsequent objections to S. 1438 by the State of Washington Department of Fish and Wildlife, as well as the Lincoln County Commissioners, stalled consideration of the settlement in the Senate. The Senate adjourned without vote on the settlement bill.

Amendments and Support

The Spokane Tribe has agreed to modify the proposed legislation to address various concerns. In 2007, the Spokane Tribe met with the State of Washington Department of Fish and Wildlife and the Washington Office of the Governor to address their concerns with the settlement bill. The Tribe and State entered into an Agreement In Principle on May 1, 2007 to resolve those concerns. See Attachment A.1. Government-to-Government Agreement In Principle.

The Governor of the State of Washington, Christine Gregoire, also voices strong support for this settlement legislation, stating that it is "clearly appropriate" and "long overdue". See Attachment A.2.

The Tribe and the Lincoln County Commissioners held meetings to address the concerns of the Commissioners with provisions of the bill affecting the Spokane River. The Tribe agreed to amend the bill to address these concerns. Section 9(a)(2) was removed, thereby excluding transfer to the Tribe of the south bank of the Spokane River, which is located outside Reservation boundaries. Section 9.(a) now confines the land to be restored to the Tribe to "land acquired by the United States . . . that is located within the exterior boundaries of the Spokane Indian Reservation." On June 4, 2007, the Commissioners endorsed by letter, "strong support" for the settlement legislation as amended. See Attachment A.4.

The Stevens County Commissioners in letters of December 18, 2007, request "renewed support" of the Tribe and for the settlement. "Please continue in your efforts to get legislation passed which finally settles this debt owed to the Spokane Tribe." See Attachment A.5. The tribe also met with landowners concerned about this provision in the bill. The above amendment regarding Section 9(a)(2) resolved their stated concerns.

The Eastern Washington Council of Governments, pursuant to letters of January 23, 2008, by Chairman Ken Oliver provides, "We urge your strongest support and consideration for this issue." See Attachment A.6.

The Spokane Tribe has reached an agreement with the Colville Tribe dated June 17, 2007 providing for a disclaimer provision in the bill regarding adjoining Reservation boundaries. See Section 9.

Section 9(d)(1) was added to provide the United States, Bureau of Reclamation full protection for carrying out Columbia Basin Project purposes. Section 9(d)(3) was added to fully protect the authority and interests of the National Park Service in the National Recreation Area within the Reservation. Section 9(d)(4) was added to provide for an MOU between the Department of the Interior and the Tribe to provide for coordination on the land transfer. The Tribe is on record with the Committee agreeing that the MOU be completed prior to the transfer of lands back to the Tribe.

The Spokane Tribe has made numerous and significant concessions over the course of negotiations on the provisions of the settlement bill. The Tribe has reached agreement with federal agencies, the State and county governments, the Colville Tribe, as well as private individuals, to resolve their concerns or objections to the bill.

Administration Objections

On June 28, 2005, John Keys, the Commissioner of the U.S. Bureau of Reclamation sent a letter to Congressman Richard Pombo, Chairman of the House Committee on Resources, raising Administration concerns and issues with H.R. 1797, Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act. Subsequently, the Spokane settlement legislation was approved by the House on July 25, 2005, during the 109th Congress. The Commission's letter raised three main concerns. These concerns and the Tribe's perspective on them and the actions the tribe took to address them are discussed below.

> "First, the Spokane Tribe has not brought forward a legal claim that would warrant this type of settlement and there is no legal claim pending."

This legislation is not a settlement of legal claims, it is "to provide for equitable compensation . . . for the use of tribal lands for the production of hydropower by the Grand Coulee Dam . . ."

The Colville settlement was also not a settlement of legal claims. The Department of Justice took the express position before Congress that the Colville also had no legal claim; only a "moral claim". The settlement was based on the history and record of dealings with the Tribe. This history and record includes the repeated promises made by the U.S. to provide compensation to both tribes.

> "While plaintiff had no legal and equitable claim based on the navigational servitude, they did have a viable moral claim based on the "fair and honorable dealings" provision of the Indian Claims Commission Act of 1946.
>
> The resolution reached in the proposed settlement does not constitute an admission of liability. . .. But, we are prepared to recognize that the record, in this timely filed claim, can be read to reflect an undertaking by the United States with respect to power values. Because of that we think it is fair and just to fashion a complete resolution of this longstanding claim."
>
> State of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S. 2259 before the Subcomm. on Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103–943, Aug. 4, 1994. at 17).

Congress has enacted many equitable settlements and jurisdictional legislation on behalf of Indian tribes for the flooding of tribal lands for the use of hydropower and other purposes in the interest of justice and fairness.

In the 1994 Colville settlement Hearings and Colloquy, senators McCain, Bradley, Inouye and Murray instructed the U.S. to negotiate a similar settlement with the Spokane Tribe–along the lines of the Colville settlement. The Senate Committee and the Colloquy expressly noted that both tribes suffered virtually identical harm and yet the settlement legislation compensated only the Colville Tribe. Specific quotes from that colloquy are contained in this statement under CONTINUING RECOGNITION OF THE TRIBE'S INTERESTS at pp. 9–12.

The U.S. made express promises to compensate both tribes with a share of the power revenues for the use of tribal lands in 1933 and 1935. See HISTORICAL CONTEXT at pp. 2–3.

The DOI Associate Solicitor Memorandum of 1976 states that the U.S. behavior toward both tribes amounted to an "act of confiscation", where the trustee converts the property of the beneficiary to his own use.

> "The Department has not only failed to give the Tribes a share of the benefits of developing tribal property, but in the development has largely destroyed what other economic bases, fishing, farming and timbering, the Tribes may have had in their remaining property. The blatant lack of care taken by the Department to protect its own fiduciaries is confirmed by the letters and background activity described previously in the Statement of Fact. In the case of Grand Coulee, the Department knew precisely what destruction was being caused and what types of compensation of tribal property were appropriate. . .. Finally, given the knowledge the Department had of the Indian rights and needs at stake, it appears to have been derelict in not informing Congress of these, *so that congress could take informed and specific action. . .. No case law grants executive agencies authority to unilaterally abrogate Indian rights. Certainly throughout the construction of these two projects, the posture of the Department can be described not as . . . an exercise of guardianship, but an act of confiscation*."
>
> Memorandum from Lawrence A. Aschenbrenner, Acting Associate Solicitor, Division of Indian Affairs, to Solicitor, p. 13 (1976) (emphasis added).

In 1975, Congress authorized the Grand Coulee Task Force *"to determine what, if any, interests the Tribes have in such production of power at Chief Joseph and Grand Coulee Dams, and to explore ways in which the Tribes might benefit from any interest so determined."* S. Rep. 94–505, Dec. 4, 1975, at 79.

In the interim, in 1979, the Solicitor for Interior proposed to the Secretary of the Interior a Congressional settlement of the claims of the Colville and Spokane Tribes, stating,

> "I firmly believe that a settlement in this range is a realistic and fair way of resolving this controversy. The representatives of the Departments of Energy and Army who participated on the Federal Negotiating Task Force concur.
>
> Legislative Proposal on Settlement of the Claims of the Colville and Spokane Tribes, Memorandum of Leo M. Krulitz to Eliot Cutler, May 7, 1979.

In the 1980 Task Force Report, the U.S. instead, for the first time, asserted legal defenses against the Tribes' claims and denied compensation.

> "[I]n 1975, the Senate Committee on Appropriations directed the Secretaries of the Interior and Army to open discussions with the Tribes to assess a resolution of this dispute. S. Rep. 94–505, p. 79. Pursuant to that directive, a task force, consisting of the Departments of the Interior and Army, and the Bonneville Power Administration, issued a final report in September 1980.

The report was approved by the Secretary of the Interior. It concluded among other things that there was "no question but that the Tribes would be entitled to compensation had the projects been built and operated by the Federal Power Act licensees," and that the Tribes would have received a reasonable benefit as fixed by that Commission pursuant to Section 10(e) of the Federal Power Act. The report further suggested that the legal defenses of the United States be exhausted with respect to navigational servitude before further action be taken regarding the Tribes' power claims."

Statement of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S.2259 before the Subcomm. on Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103–943, Aug. 4, 1994, at 16).

Following the 1994 Colville Settlement, the Spokane Tribe attempted to carry out the negotiation of a settlement with DOJ and DOI. The Tribe consistently, over several years, got nothing but bounced back and forth between the run-a-round from both agencies and no actual negotiations occurred.

"The hearing records show that Committee members in both the House and Senate were sensitive to the need to provide a settlement for the Spokane Tribe. The report of the House Natural Resource Committee directs the Departments of the Interior and Justice to negotiate with the Tribe to settle its claims. In the Senate, a colloquy between Senators Murray, Inouye, Bradley and McCain stressed that appropriate federal agencies should negotiate with the Spokane Tribe.

Based on the foregoing, we are requesting that the Department *proceed as soon a possible to negotiate with the tribe on its power value and fishing claims as previously directed by Congress*."

Letter from Sen. Patty Murray, Sen. John McCain, Sen. Daniel Inouye, Sen. Bill Bradley, and Rep. George Nethercutt to Bruce Babbitt, Secretary of the Interior, dated July 9, 1996.

"The claims of the Spokane Tribe of Indians are virtually identical in substance to those of the Colville Tribes related to construction and operation of the Dam: loss of religious, fishing, burial, power and irrigation sites. While the region received significant benefits, the Tribe suffered devastating impacts on their culture, lifestyle and economy which have not yet been addressed. Because of the Administration opposition, the Congress did not settle the Spokane claims when the Colville Settlement Act was passed, nor did the Settlement Act waive the ICCA statute of limitations to open the door for the Spokane Tribe's equitable claim.

The Congress did, however, recognize this Nation's need to resolve the Spokane Tribe's claims regarding Grand Coulee Dam. In fact, the House Committee Report on the Colville bill *directs the Departments of Interior and Justice to work with the Spokane Tribe to address the Spokane Tribe's claims on their own merits.* A colloquy among Senators Bradley, McCain, and ourselves in November 1994 expressed the same direction to the agencies as the House Report.

We are therefore frustrated that three years after enactment of the Colville Tribes's Settlement Act, the Departments, while conducting numerous meetings with the Tribe, *have still failed to enter into negotiations.*

We continue to believe *it is grossly unjust for one Tribe to be compensated while a similarly affected neighboring Tribe is left with no remedy.* Therefore, *in the strongest possible terms, we urge the Departments to enter into negotiations with the Spokane Tribe immediately so that a fair and equitable settlement of the Tribe's claims can be reached.* A resolution of the Spokane claims, of course, *must involve payment for past damages,* as well as payment for future power revenues."

Letter from Sen. Patty Murray and Sen. Daniel Inouye to Bruce Babbitt, Secretary of the Interior and Janet Reno, Attorney General, dated March 2, 1998.

The Spokane Tribe finally sought legislative help from Senator Murray and Congressman Nethercutt, and asked for a jurisdictional bill to allow the Tribe to file a legal claim and have it's day in court with the U.S.. The DOJ strongly opposed this effort.

That is why there is no legal claim. The Colville did not have one either. Both Tribes did not file Coulee claims in 1951. Both Tribes did not have legal claims. Both Tribes have equitable moral claims. Only one Tribe is being compensated. The U.S. misled both Tribes with promises and negotiations and then reversed position

by asserting legal defenses 40 years after the fact when the compensation stakes got too high. Words where much cheaper than fair compensation. Since the Spokane Tribe had settled their claims case with the U.S. in 1967, they had no claims case to amend to later add Grand Coulee claims.

> "The Administration therefore believes it would be premature to assume that future budget proposals will recommend . . . appropriations at the levels proposed in the bill."

The impact on BPA ratepayers would be approximately 9 cents per megawatt hour ($0.09). That represents a 0.14 to 0.31 percent increase in BPA rates. This is about as close to a zero impact as one could calculate. BPA clearly should be able to reduce costs by one or two tenths of one percent to cover the cost of the annual payment proved for in Section 6 of the bill.

The Senate Committee and the House Report instructed the U.S. to negotiate a settlement with the Spokane along the lines of the Colville settlement.

The Spokane lost the equivalent of 39 percent of the lands the Colville lost to Grand Coulee. The Spokane bill provides the equivalent of 29 percent of the Colville settlement payments adjusted for inflation from the date of the Colville Settlement Act, in addition to the return and transfer of lands in Section 9.

The Spokane also lost all salmon runs and two of their valuable hydropower sites on the Reservation.

> "Second, the Department is concerned with transferring land and jurisdiction . . . absent a prior written agreement to fully address future management responsibilities."

Following release of the Administration/Keys letter on June 28, 2005, the Tribe met with U.S. DOI/BOR officials, including the Commissioner of BOR, on July 12, 2005 and came to an agreement that the land transfer would not take place until the MOU between the U.S. and the Tribe called for in Section 9(c)(4) was completed. This agreement was communicated to the Committee via a July 21, 2005 e-mail message from Tribal Attorney, Howard Funke to Majority and Minority Counsel, Senate Committee on Indian Affairs (proposing Senate report language evidencing this agreement).

> "Third, what specific duties are required of the Secretary . . . with respect to trust lands?"

The bill was amended to add current Section 9.(b)(2) FEDERAL TRUST RESPONSIBILITY. The Federal trust for all lands transferred under this section shall be the same as the responsibility for other tribal land held in Trust within the . . . Reservation.

The Department of the Interior is well versed in its trust responsibility for Indian Reservation lands. These Spokane Reservation lands returned to the Tribe are no different.

The Tribe understands that the Department of the Interior, despite these modifications to the legislation and the historical context for such a settlement, continues to have virtually the same three issues with the Spokane settlement legislation. The House, in the 109th Congress approved the Spokane settlement legislation, with knowledge of these issues.

Conclusion

The Tribe has exerted significant efforts to retain its homelands, to receive the benefit of the promises made by the United States to reserve our lands, and to fairly compensate us for the use of our lands for the production of hydropower. Our people have endured enormous past and present impacts to their resources, their way of life and their culture due to operation of the Project. Grand Coulee delivers enormous benefits to the United States and the region. The Colville Tribes, similarly situated directly across the Columbia River, share in the benefits of the Project. The Spokane deserve fair and honorable treatment by its trustee, and the region, in a settlement due them for the use of their lands for the production of hydropower and many other Project purposes.

ATTACHMENT A

Letters – Agreements - Resolution

In Support Of

The Spokane Tribe of Indians of the Spokane Reservation
Grand Coulee Dam Equitable Compensation Settlement Act

S. 2494

May 15, 2008

1. Government-to-Government Agreement in Principle Between the State of Washington Department of Fish and Wildlife and The Spokane Tribe of Indians for the Spokane River Arm of Lake Roosevelt

2. State of Washington Governor Christine Gregoire letter December 14, 2007, "Today I write in support. . .”; “. . . clearly appropriate that this settlement be approved. . . .”; and “. . . long overdue. . . .”

3. Spokane, Washington Mayor Mary Verner letter of December 11, 2007, “. . . voice strong support. . . .”; and “. . . I endorse this bill and settlement. . . .”

4. Lincoln County Commissioners letter of June 4, 2007, “. . . strongly supports the legislation being proposed to settle the tribe's long standing claim. . . .”

5. Stevens County Commissioners letters of December 18, 2007, “. . . we are honored to call them our neighbors and friends. . . .”; and “Please continue in your efforts to get legislation passed. . . .”

6. Eastern Washington Council of Governments, Chairman, Ken Oliver letters of January 23, 2008, “We urge your strongest support and consideration. . . .”

7. National Congress of American Indians Resolution #DEN-07-027, November 11-16, 2007; “. . . grossly unjust and dishonorable for one Tribe to be compensated while a similarly affected neighboring Tribe is not. . . .”

8. Colville-Spokane Reservation Boundary disclaimer agreement of June 17, 2007

Government-to-Government Agreement in Principle
Between the State of Washington Department of Fish and Wildlife
and The Spokane Tribe of Indians

For the Spokane River Arm of Lake Roosevelt

PARTIES: This Agreement in Principle is by and between the Spokane Tribe of Indians (Tribe) and the State of Washington Department of Fish and Wildlife (WDFW), acting through duly authorized representatives.

WHEREAS, the Tribe and WDFW have developed a cooperative and beneficial working relationship on important issues affecting Lake Roosevelt, including but not limited to the use of water supplies for agriculture, hydropower, protection of water quality, enhancement of fisheries and recreation and other beneficial uses, while providing "seamless" fishing opportunities for anglers, and

WHEREAS, the congress of the United States has pending before it "The Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act" (Act); and

WHEREAS, the Tribe and WDFW intend to develop a cooperative agreement with other affected governments to provide for coordination and cooperative-management of resources and interests within Lake Roosevelt; and

WHEREAS, representatives of WDFW and the Tribe have discussed and cooperatively worked together to develop an agreement in principle, which respects each party's sovereignty;

NOW THEREFORE, the undersigned parties, understanding their mutual intent to develop a joint Cooperative Assistance Agreement, agree in principle to the following terms for management of law enforcement activities under the Act by their respective agencies on the Spokane River Arm of the Roosevelt.

1. Open Waters and South Shore of the Spokane River Arm of Lake Roosevelt.

   The Tribe and the WDFW shall enforce their respective laws, rules and regulations regarding fish and wildlife on the open waters and south shore of the Spokane River Arm of Lake Roosevelt, emphasizing joint enforcement patrols as a practical approach for avoiding conflicts during enforcement contacts.

2. North Shore of the Spokane Arm of Lake Roosevelt and Adjacent Secondary Shorelands of the Spokane Indian Reservation.

   The Tribe shall enforce its applicable laws, rules and regulations regarding fish and wildlife on the north shore of the Spokane Arm of Lake Roosevelt on the Spokane Indian Reservation.

3. "Seamless" Fishing Opportunities For Anglers

To avoid confusion and provide seamless fishing opportunities, the Tribe and WDFW agree that, from the perspective of the "average" angler, the parties' fishing regulations must be aligned ("match" if possible). Therefore, under the Act:

a. A valid State or Tribal (for enrolled Spokane tribal members) fishing license shall authorize fishing on the open waters and south shore of the Spokane River Arm of Lake Roosevelt.

b. A valid Tribal fishing license or permit shall authorize fishing from the north shore of the Spokane River Arm of Lake Roosevelt on the Spokane Indian Reservation for non-members. The Tribal fishing license or permit for non-members will include a requirement for a valid State fishing license.

4. Cooperative Assistance Agreement

Consistent with applicable laws, the Tribe and WDFW shall assist one another cooperatively in their respective enforcement responsibilities and activities, emphasizing coordinated joint enforcement strategies as provided above, and develop a specific agreement, which provides for broad geographic and temporal coverage and addresses elements such as logistics, tools, and scheduling.

CHAIRMAN
SPOKANE TRIBE OF INDIANS

Dated: 2/22, 2007

DIRECTOR
STATE OF WASHINGTON
DEPARTMENT OF FISH & WILDLIFE

Dated: 5/1, 2007

CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

December 14, 2007

The Honorable Maria Cantwell
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Norm Dicks
U.S. House of Representatives
2467 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Senator Cantwell and Congressman Dicks:

Today I write in support of the Spokane Tribe of Indians Grand Coulee Dam Equitable Compensation Settlement Act, a bill to provide monetary compensation and return of the lands to the people of the Spokane Tribe that were taken, damaged, or used for the construction and operation of the Grand Coulee Dam. I also offer the full assistance of my office in your efforts to pass this legislation as it is clearly appropriate that this settlement be approved and compensation paid.

For many years, the people of the Spokane Tribe were joined with the Columbia and Spokane Rivers in a relationship that defined the Tribe's culture, economy, and way of life. The rivers were their primary source of food, trade and spirituality, and played a central role in shaping tribal identity. To be a Spokane tribal member was to believe in and rely upon the abundance and permanence of the river's bounty. The Spokane People referred to the Spokane River as the "Path of Life." It is difficult for most people living in Washington to comprehend the profound and devastating impacts and effects forced upon tribal members during construction and subsequent operation of the dam.

As a result of your efforts in Congress, the people of the United States now have an opportunity to redress, in part, the damage inflicted on the Tribe. I am committed to work with you to secure some measure of fair and equitable compensation for the past and continued use of Spokane Tribal land for the production of hydropower at Grand Coulee Dam.

The state of Washington, the Pacific Northwest, and the United States receive enormous benefits from the low-cost power, flood protection, water supply, and other value provided by the Grand Coulee Dam. Indeed, the very competitiveness of the regional economy is founded in large measure upon these benefits. The Spokane Tribe has long waited to receive fair and honorable compensation for the use of their lands by Grand Coulee. It should be obvious to all that fulfillment of that obligation is long overdue.

I look forward to working with you to enact this important legislation.

Sincerely,

Christine O. Gregoire
Governor

City of Spokane

December 11, 2007

The Honorable Marie Cantwell
Member, United States Senate
SD-511 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Norman Dicks
Member, United States House of Representatives
2467 Rayburn House Office Building
Washington, DC 20515-4706

Dear Senator and Congressman:

I appreciate this opportunity to voice strong support for the Spokane Tribe of Indians' Grand Coulee Dam Equitable Compensation Settlement Act. I am familiar with the relevant history of the Tribe and the proposed legislation and I endorse this bill and settlement. The Ground Coulee Dam has brought tremendous benefits to our region, to the West, indeed to the entire country. Regrettably, those rewards came at the expense of the Spokane Tribe and the Colville Confederated Tribes. Both Tribes have suffered devastating impacts to their culture, economy and way of life. Yet the Colvilles secured a settlement with the United States in 1994, while the annual impacts to the Spokane continue unmitigated and their historic claims are still unresolved. The proposed legislation represents a final settlement of the Spokane Tribe's claims.

Similar Spokane settlement bills were approved by the United States Senate in 2004 and the House of Representatives in 2005. I also note that the annual compensation payments provided for in the bill are not to be paid by the region's ratepayers, but are to be recovered from cost reductions in expenditures by BPA on an annual basis.

The Spokane Tribe is our good neighbor. The Tribe has fought long and hard in numerous regional forms to protect and enhance the values and interests associated with the Spokane and Columbia Rivers and Lake Roosevelt. I applaud the Tribe in their successful and generous efforts to address in this bill the previously stated concerns of affected State and local governments, Indian Tribes and individual landowners as well as federal agencies. Congressional approval of this proposed settlement legislation will right a longstanding wrong imposed on the Spokane Tribe, foster positive intergovernmental relations, as well as provide numerous other benefits to our region.

A fair and honorable settlement with the Spokane Tribe, for the past and continued use of their lands for the production of hydropower, is long overdue. I urge Congress to enact this important legislation.

Sincerely,

Mary Verner

Mary Verner
Mayor

Board Of
Lincoln
County
Commissioners

Lincoln County, Washington
P.O. Box 28 · Davenport, Washington 99122
Office Phone: (509) 725-3031 · FAX: (509) 725-2034

Regular Meetings First & Third Monday of Each Month

June 4, 2007

Richard L. Sherwood, Chairman
Spokane Tribe of Indians
P.O. Box 100
Wellpinit, WA 99040

RE: Settlement Bill

Dear Chairman Sherwood,

Thank you for providing Lincoln County an advance copy of the proposed federal legislation for the Spokane Tribe of Indians. As you are aware, last year we took exception to the proposed legislation because it included a provision which would transfer the south shore of the Spokane River, up to the 1290 elevation, to the tribe. We greatly appreciate that in the current legislation you have eliminated that provision and that the South shore of the Spokane River will remain as it has since the inception of the Coulee Dam Project.

The Board of Commissioners has a very minor concern with the agreement that was entered into with the Washington State Department of Fish and Wildlife. However, the concern is of such a minor nature that we would not wish to hold up your settlement bill over an issue that we feel certain can be worked out between ourselves.

Based on our understanding that the legislation proposed by the Spokane Tribe of Indians would officially transfer administrative jurisdiction of that portion of land that includes the south bank of the Spokane River as it existed before Grand Coulee Dam was constructed; and understanding that the exact location of the original south bank cannot be accurately determined; but further understanding that it does not reach to the south bank of the current body of water, the Board of Lincoln County Commissioners fully and strongly supports the legislation being proposed to settle the tribe's long standing claim against the federal government. Our support is based on the proposed legislation that has been provided by the tribe and if that legislation changes during the legislative process, we would reserve the right to re-evaluate the impact on our citizens and our support for the bill.

Dennis D. Bly
Commissioner District No. 1

Dehal D. Buleneus
Commissioner District No. 2

Ted Hopkins
Commissioner District No. 3

Shelly Johnston
Clerk of the Board

We want to thank the Council of the Spokane Tribe of Indians for their efforts to reach out to Lincoln County in a positive manner to resolve an issue that was potentially divisive to the region.

Respectfully,

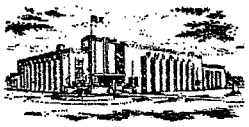
Dennis D. Bly	Deral D. Boleneus	Ted Hopkins
Chairman	District #2	District #3

cc: Senator Patty Murray
Senator Maria Cantwell
Representative Cathy McMorris Rodgers
Senator Bob Morton
Prosecuting Attorney

Tony Delgado
District No. 1

Merrill J. Ott
District No. 2

Malcolm Friedman
District No. 3



Polly Coleman
Clerk of the Board

Nettie Winders
Assistant Clerk

Stevens County Commissioners

215 South Oak St, Room #214, Colville, WA 99114-2861
Phone: 509-684-3751 Fax: 509-684-8310 TTY: 800-833-6388
Email: Commissioners@co.stevens.wa.us

December 18, 2007

Senator Maria Cantwell
U.S. Senate Rm 717
Hart Building
Washington, D.C., 20510

Dear Senator Cantwell,

We are writing to request renewed support for authorizing reparation payments to the Spokane Tribe of Indians. The Grand Coulee Dam's reservoir, Lake Roosevelt inundated their traditional lands many decades ago, and through a series of false starts and circumstances, the Spokane Tribe has yet to receive reparation payments.

Ironically, the Eastern Washington Council of Governments, of which Stevens County is a member, met recently. It was on December 7 – the 66th anniversary of Pearl Harbor – and it was then, in 1941, in Washington, D.C. that a bill was being considered to grant the reparation payments to the tribe. In a most gracious and patriotic fashion, the Spokane Tribe did not pursue the passage of the bill granting reparations, but instead, stood aside to stand side by side with all the Americans to engage in the WWII conflict.

They continue to lead by example, and we are honored to call them our neighbors and friends. Please continue in your efforts to get legislation passed which finally settles this debt owed to the Spokane Tribe.

Sincerely,

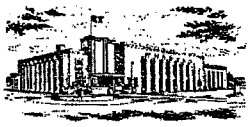
Malcolm Friedman Chairman of the Board Commissioner	Merrill J. Ott Commissioner	Tony Delgado Commissioner

Cc: Chairman Rick Sherwood, Spokane Tribe of Indians
Representative Cathy McMorris-Rodgers

Tony Delgado
District No. 1

Merrill J. Ott
District No. 2

Malcolm Friedman
District No. 3



Polly Coleman
Clerk of the Board

Nettie Winders
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Phone: 509-684-3751 Fax: 509-684-8310 TTY: 800-833-6388
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B-34 Dirksen Senate Building
Washington, D.C. 20510

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Chairman of the Board
Commissioner

Merrill J. Ott
Commissioner

Tony Delgado
Commissioner

Cc: Chairman Rick Sherwood, Spokane Tribe of Indians
Senator Maria Cantwell
Representative Cathy McMorris-Rodgers

Eastern Washington
Council of Governments

215 S. Oak St, Colville , WA 99114
509-684-3751

Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
Treasurer Ted Hopkins, Lincoln County

Jan 23, 2008

Representative Cathy McMorris-Rodgers
1708 Longworth House Office Building
Washington, D.C., 20515

Dear Representative McMorris-Rodgers,

The Eastern Washington Council of Governments (EWCOG) continues to fully support efforts by the Spokane Tribe of Indians to gain reparation payments for the Columbia River's inundation of their lands when the Grand Coulee Dam was constructed many decades ago. To this date, the United States has yet to fulfill their promise of reparation payments, and though legislation was introduced last year, the authorization has yet to materialize.

The county commissioners of the EWCOG continue to meet on various issues of concern here in the northeast portion of this great state. Our concerns for developing a healthy economy, protecting our resources, and engaging our state and federal representatives remain strong. Your visits to our region have been encouraging to us all.

We urge your strongest support and consideration for this issue. As we move ahead in our regional issues, our friends and neighbors in the Spokane Tribe have and continue to be an integral force helping us all.

Thank you for your service to our great state of Washington.

Sincerely,

Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
commissioners@co.stevens.wa.us

Eastern Washington
Council of Governments

215 S. Oak St, Colville, WA 99114
509-684-3751

Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
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Jan 23, 2008

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511 Dirksen Senate Office Building
Washington, D.C., 20510

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Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
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Eastern Washington
Council of Governments

215 S. Oak St, Colville, WA 99114
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Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
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Jan 23, 2008

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173 Russell Senate Office Building
Washington, D.C., 20510

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Thank you for your service to our great state of Washington.

Sincerely,

Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
commissioners@co.stevens.wa.us

NATIONAL CONGRESS OF AMERICAN INDIANS

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Ohkay Owingeh
(Pueblo of San Juan)

FIRST VICE-PRESIDENT
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Chickasaw Nation

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Jamestown S'Klallam Tribe

TREASURER
gaiaishkibos
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Ron His Horse Is Thunder
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Cheyenne-Arapaho Tribe

SOUTHWEST
Derek Valdo
Pueblo of Acoma

WESTERN
Alvin Moyle
Fallon Paiute Shoshone Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax

The National Congress of American Indians
Resolution #DEN-07-027

TITLE: Support of Congressional Settlement of Grand Coulee Dam Claims

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the construction and operation of Grand Coulee Dam on the Columbia River destroyed and continues to injure scarce Tribal resources without payment of fair compensation to the Spokane Tribe for its losses; and

WHEREAS, the Spokane Reservation boundaries expressly include the entire adjacent riverbeds of the Columbia and Spokane Rivers; and

WHEREAS, construction of the Grand Coulee Dam flooded 40 miles of the Reservation and its river boundaries, inundated valuable power sites available to the Spokane Tribe and cut off fish migration to the Spokane territory; and

WHEREAS, while the nation and the region received enormous benefits from the construction and operation of Grand Coulee Dam, the Spokane Tribe suffered devastating impacts on their culture, lands, resources, and economy; and

WHEREAS, Grand Coulee generates approximately one billion annually, the Spokane Tribe has received only $4,700 in compensation for its losses, despite repeated promises by the United States to fairly compensate the Spokane Tribe; and

WHEREAS, Grand Coulee makes a critical contribution to the operational flexibility and reliability of the Federal Columbia River Power System; and

WHEREAS, in 1992, the U.S. Court of Claims ruled that the United States was liable to the neighboring Colville Confederated tribes for failing to deal "fairly and honorably" with the Colville tribes by keeping the power value of the river and Grand Coulee Dam to itself, which resulted in Congress enacting the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436; 108 Stat. 4577, 103rd Congress, November 2, 1994) to provide $53 million lump sum payment and $15 million in annual payments in perpetuity to the Colville tribe in settlement of their claims; and

WHEREAS, the Colville and Spokane Tribes suffered from identical dishonorable and unfair dealings at the hands of the United States, but because the Spokane Tribe in 1967 had acted in cooperation with the United States to settle its Indian Claims Commission Act case, unaware the United States would later use that settlement as a defense against payment of fair compensation to the Tribe and in reliance on continued negotiations with the United States, the tribe did not file a claim; and

WHEREAS, when the Colville Settlement Act was passed by Congress, there was opposition by the Administration to settlement of the Spokane Tribes claims and the Spokane Tribe honored a request by the Colville Tribe to defer Spokane Tribe's claims so as not to jeopardize the Colville settlement; and

WHEREAS, Congress in passing the 1994 Colville Settlement Act, included language in the House Report and Senate colloquy, directing the Departments of the Interior and Justice to negotiate with the Spokane Tribe to settle the Tribe's claims on its own merits; and

WHEREAS, in the thirteen years following enactment of the Colville Settlement Act and approval of the settlement in the Senate in 2004, approval by the House of Representatives in 2005, the United States has still failed to fairly and honorably address and settle the claims of the Spokane Tribe; and

WHEREAS, there is ample precedent for a Congressional settlement of the Tribe's claims in these circumstances.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby believe it is grossly unjust and dishonorable for one tribe to be compensated while a similarly affected neighboring tribe is not, the federal government breached its trust obligations to the Spokane tribe. In the strongest possible terms, we urge the United States Congress to pass a Spokane Tribe Settlement Act so that a fair and equitable settlement of the Tribe's claims can be reached. Any such settlement must involve payment for past and future power revenues and a return of lands taken from the Tribe by the United States for the project; and

BE IT FURTHER RESOLVED that this resolution shall be a policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2007 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Denver at the Colorado Convention Center in Denver, Colorado on November 11-16, 2007, with a quorum present.

President

ATTEST:

Recording Secretary

OFFICE OF THE RESERVATION ATTORNEY
Confederated Tribes of the Colville Reservation
P. O. Box 150
Nespelem, WA 99155
Telephone: (509) 634-2381 Fax: (509) 634-2387

RECEIVED
JUN 19 2007

Via Telecopier to 208-667-4695,
Followed by First-Class U.S. Mail

June 17, 2007

Howard Funke, Attorney At Law
Howard Funke & Associates, P.C.
424 Sherman Ave., Suite 308
P.O. Box 969
Coeur d'Alene, ID 83816-0969

Re: Disclaimer language for Colville-Spokane Reservation boundary in Spokane Tribe Coulee Dam Settlement Bill

Dear Mr. Funke:

In a letter dated March 21, 2007, I proposed draft disclaimer language for Section 9 of the Spokane Tribe Grand Coulee Dam Settlement bill, re the boundary between the Colville and Spokane Reservations. We subsequently discussed this and on April 25, 2007, at a meeting in Spokane, you provided me with modifications to my proposed language. This letter is to advise that your modifications are acceptable to the Colville Tribes. The language in question, including your modifications, is as follows:

> Nothing in this section shall be construed as establishing or affecting the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River.

This language is found at Section 9 (c) of the full draft bill as you provided it to me an email on May 10, 2007. You have indicated that the bill may be introduced soon. Please advise me in the event Section 9 is modified in any way. Please note, too, that the Colville Tribes' acceptance of this boundary disclaimer language is not intended to indicate any position on the merits of the bill or whether it should be enacted.

I have appreciated your courtesy and professionalism in working with me to produce language that is acceptable to both the Spokane and Colville Tribes. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

Stephen H. Suagee
Reservation Attorney

cc: Colville Business Council

PHOTOGRAPHS OF PARTIAL EFFECTS OF GRAND COULEE DAM OPERATION

ON

THE SPOKANE INDIAN RESERVATION

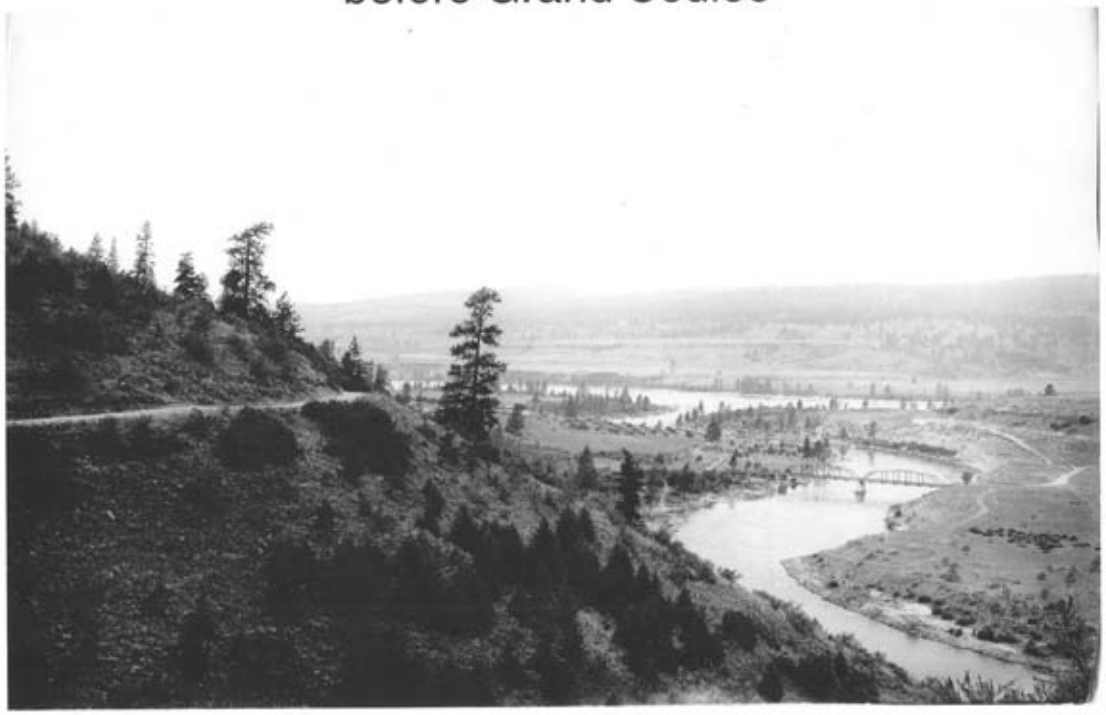
PROVIDED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

REGARDING

S. 2494 THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE INDIAN RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION ACT

May 15, 2008

Spokane River looking down at the Columbia before Grand Coulee



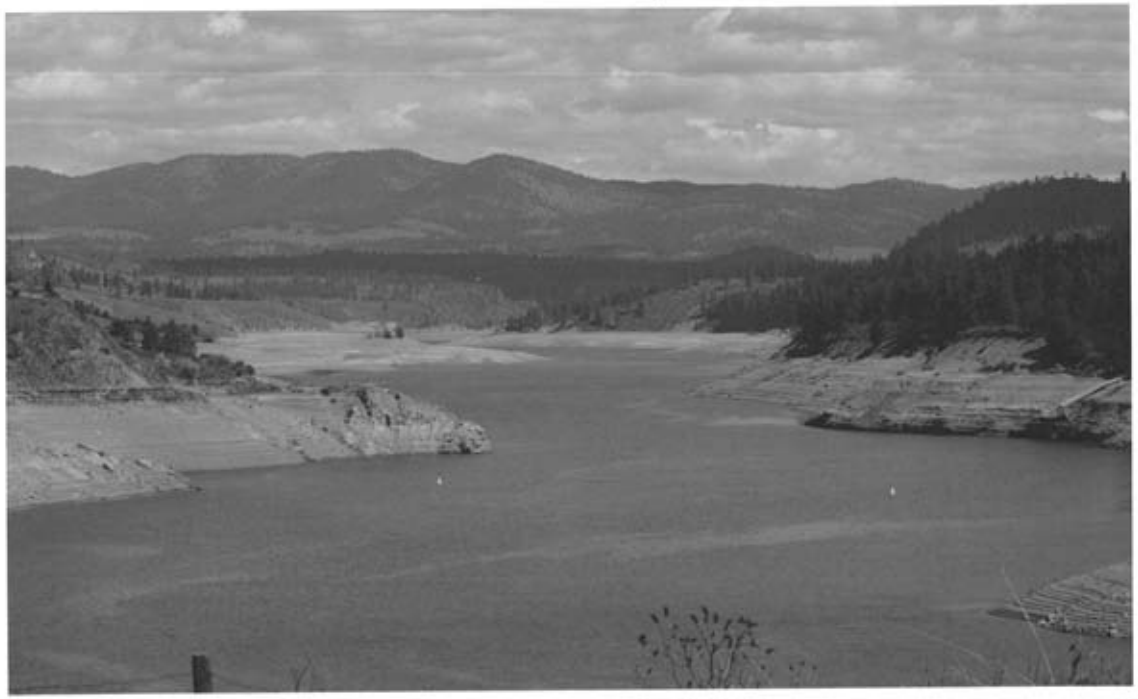
Spokane River looking down at the Columbia after Grand Coulee

Billions of dollars of benefits annually go down river and to the 4 NW states but little to the Spokane Tribe, who land stores this beneficial water

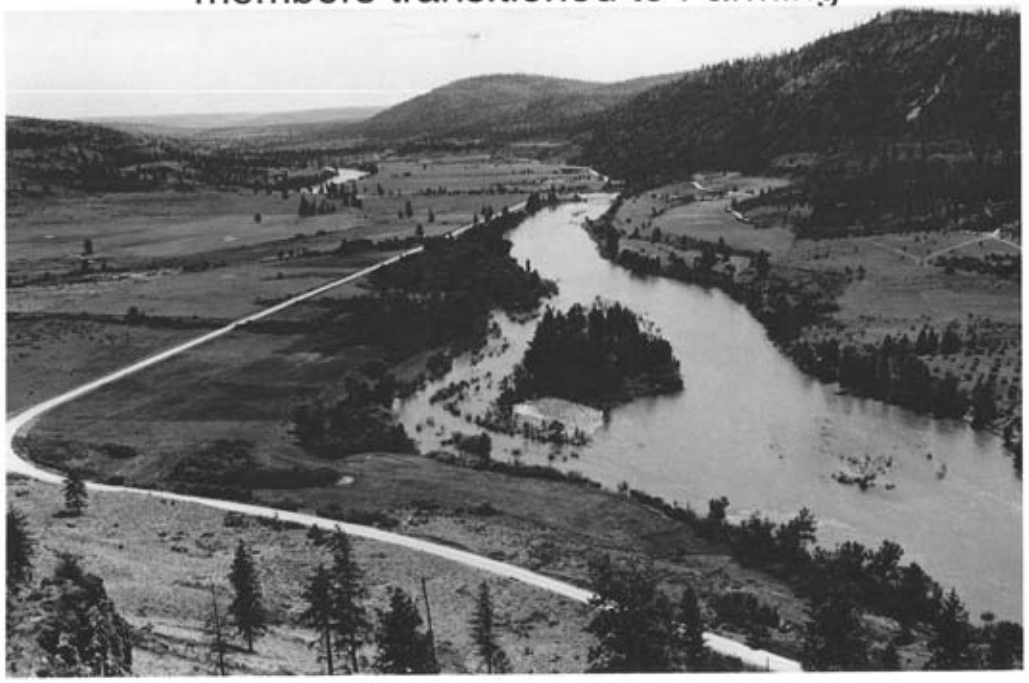
High lake level 1290' - Original level 1210' - 5/01/08 level 1228'

2008 - Will see 65 feet of drawdown and the erosion process continues

180 miles of water storage for electricity production,
Salmon Recovery and Flood Control is great for the Region but
continues to haunt the Spokane Tribe



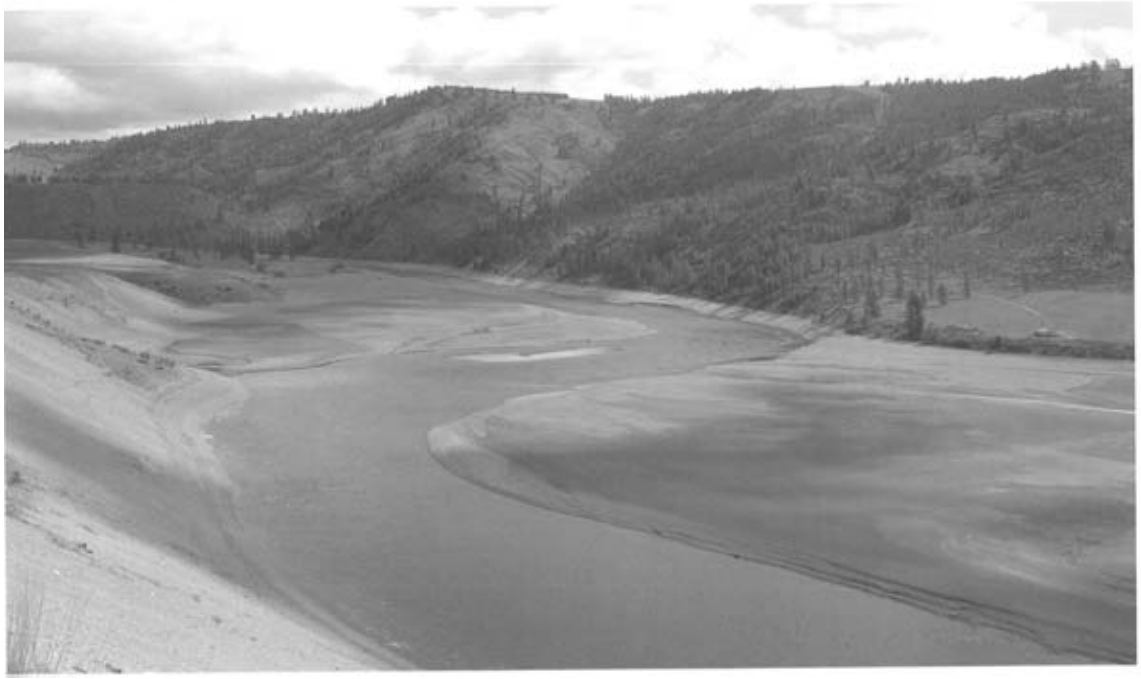
"Detillion Bridge" before Grand Coulee Dam
Salmon runs devastated down river,
members transitioned to Farming



"Detillion Bridge" cleared for Lake Roosevelt, Tribal Farms, Homes, Orchards all removed

Lebret's farm 1910 - Habitat to sharp tail grouse, grouse so significant to tribe, ceremonial dance is done about them

Lebret's farm, habitat, cottonwood groves, culture sites all flooded or gone



Tribal winter camps flooded

"Sand spit" erosion opens up graves, exposes culture resources, devastates low land riparian areas, ends farming

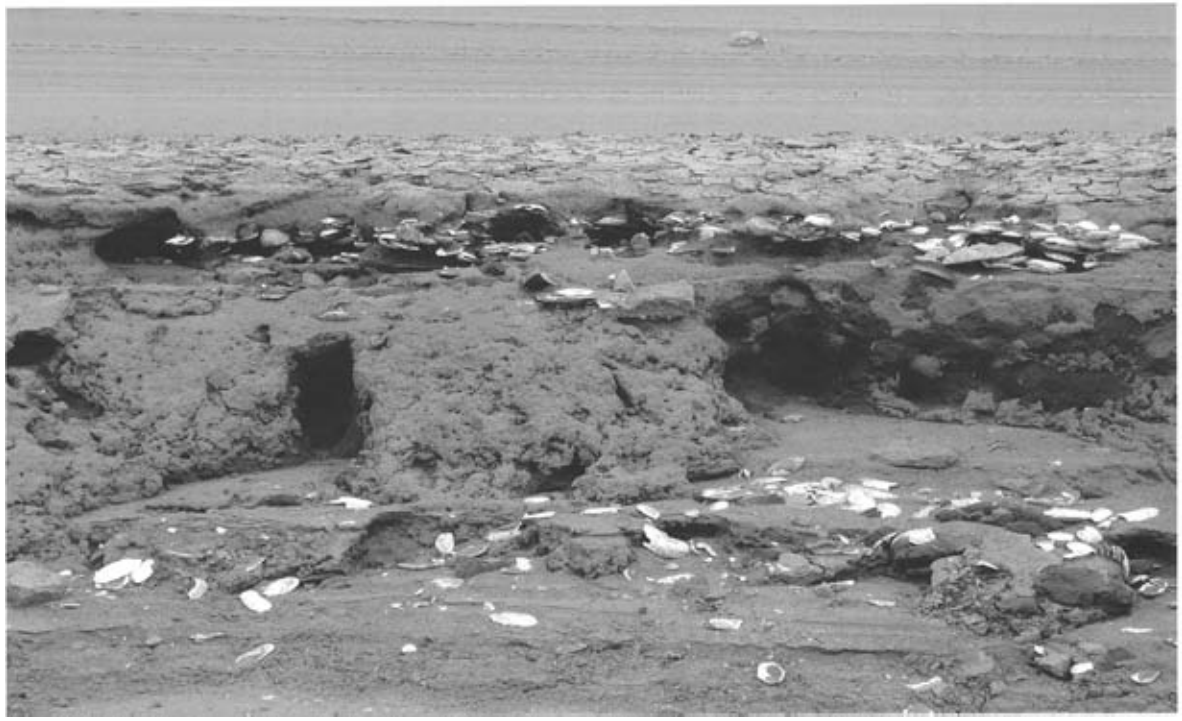
2,000,000 visitors to Lake Roosevelt
bring boats and wave action

major winter camp areas find the banks being destabilized and cultural resources lost into the river

Bones need to be determined if human or animal

Artifact hunters may be found anywhere on the 360 miles of open beach

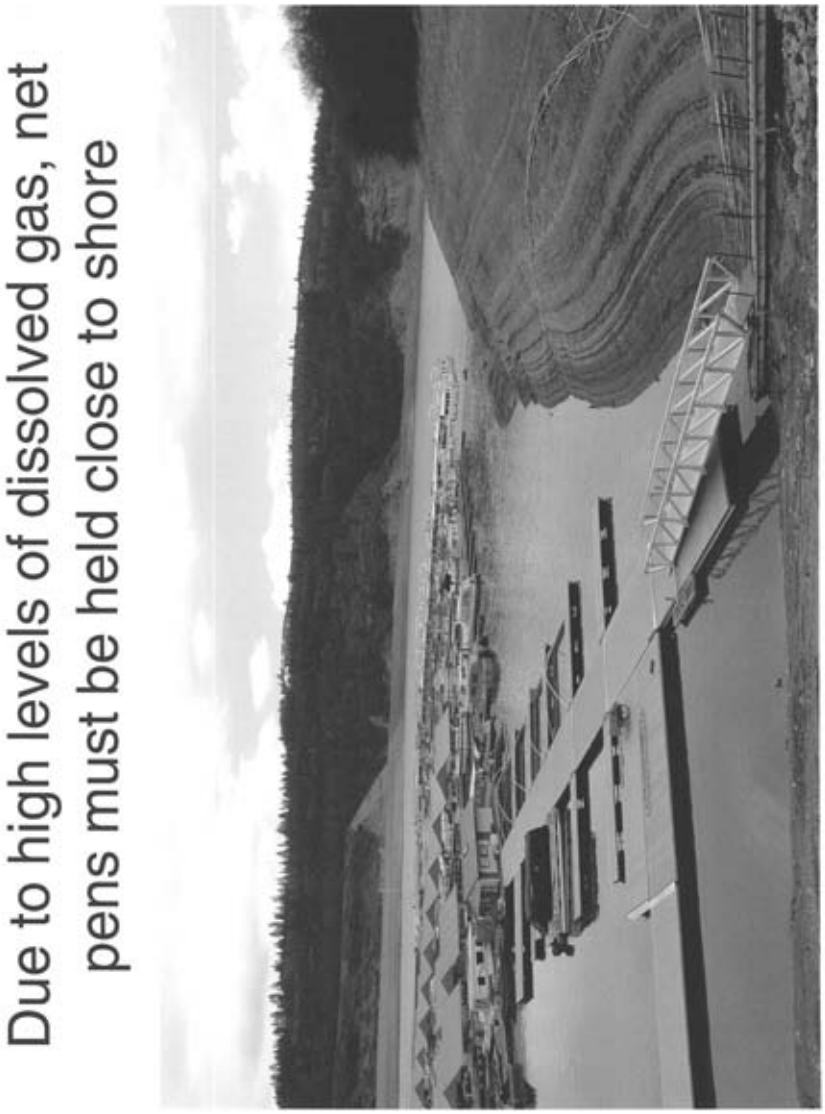
Salmon were not the only fish loss. Areas like Silpimken's once flourished with shell fish, now a dead zone



Boat docks high and dry at 7-bays

Columbia River beaches won't see use until July

Tribal Marina faces lake fluctuation issues each season



The CHAIRMAN. Mr. Sherwood, thank you very much.

To my colleagues, I indicated at the start that Mr. Gidner would be discussing the first two bills, because the witnesses had problems with travel schedules and will have to leave to catch an airplane. Mr. Gidner will stay on the panel as we receive the other witnesses.

I also indicated that we have votes beginning at 11 o'clock, so my hope will be that we will finish these bills, including the second panel of witnesses, by 11 o'clock.

Let me call on Senator Tester for questions and then Senator Barrasso.

Senator TESTER. Chairman Venne, you say you have 2.2 million acres in your reservation. How many acres of that is fractionated?

Mr. VENNE. Probably about 80 percent of it.

Senator TESTER. Eighty percent of it. If we get this bill through, how long would you anticipate, and I know this is a crystal ball question, but I have to ask it, how long would you anticipate it taking to get the land back in a form where it is developable?

Mr. VENNE. We have discussed this with Interior and they gave me a time line for about five years to get this project done.

Senator TESTER. And it is a project, if I understand, about $380 million, 80 percent of 2.2 is about 1.6 million plus 1.7 million acres?

Mr. VENNE. Yes.

Senator TESTER. Okay. Mr. Chairman, do you want them all directed to the chairmen of the tribe and we will save Jerry Gidner for later?

The CHAIRMAN. Let us save Mr. Gidner until the other witnesses have testified, if that is satisfactory.

Senator TESTER. That would be good. That is all I had. I just want to clarify one thing that you said: 10 percent of the total fractionated land in Indian Country in the United States is on the Crow?

Mr. VENNE. Yes, it is.

Senator TESTER. Okay. The average, the way the allotments work and the way it has been split up over the last many, many decades, is it 40, 50 people average on each parcel?

Mr. VENNE. Yes, at least 40 to 50 people. Some are over 200, some are even over 1,000 owners.

Senator TESTER. Do you have records on the reservation or do they have records in the courthouse? How do you know who to contact?

Mr. VENNE. We have all the records on each parcel of land and who owns it and how many people own it.

Senator TESTER. The last question I have, the $380 million, the way I read it, is that it is used for the purpose of buying the land to consolidate. It looks to me like there are going to be some pretty heavy administrative costs here, especially if you have parcels of land with up to 1,000 people owning them. Have you figured that into the equation and do you have the ability to handle that onsite?

Mr. VENNE. Yes. The present realty office, their budget is about $1 million a year. By the Crow Tribe doing it, Interior had agreed to give us $5 million a year to take care of this problem. I think that would be sufficient to do it. We were talking about, the bill, if it passes, I have to go back to Interior to negotiate how everything else is going to come into play. So this is not the final. What if we don't come to an agreement with Interior? That is why I was a little hesitant to say, why isn't Interior supporting this bill when it actually came out of Interior here in D.C. with the Crow Tribe to take care of the fractionated lands? If you look at Interior's budget, there is doubt, and the statistics are out there, that it is going to keep costing, costing more and more every year to handle fractionated interests in Indian Country.

Senator TESTER. This will truly be my last question. You talked about your negotiations. The negotiations that you have had surrounding this bill, and you said it in your testimony, I just didn't write it down, the negotiations you have had have been with Interior or with BIA or with both?

Mr. VENNE. Both.

Senator TESTER. Okay.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

First, Chairman Sherwood, I think I heard you say that you were sitting in the same seat that your great-grandfather sat in many years ago, fighting. I think he would be very proud of you today. Congratulations, you do an outstanding job.

Mr. SHERWOOD. Thank you.

Senator BARRASSO. First of all, Chairman Venne, a couple of things. I heard the huge number, the large number for unemployment in your community. I want to congratulate you on your efforts to develop your resources, to increase value, to increase productivity and use of the land, to become self- sufficient. As the neighbor to the south, everything you do to benefit your own I believe helps communities on both sides of the Wyoming-Montana border.

I do have some questions on S. 1080, the Crow Tribe Land Restoration Act. As we are neighbors, this bill in essence has about three moving parts on our neighboring relationship on the river between Wyoming and Montana. There are the tribes' 1868 water rights that predates the States of Wyoming, the States of Montana and even the Eastern Shoshone and Northern Arapaho Tribes in Wyoming. There is the Crow Compact, a complex agreement between the State of Montana and the Crow, which was designed in 1999 to quantify the Tribe's water rights. And we have this land bill, which would address the Crow Tribe's difficulties with land issues. It would aid the Crow in purchasing lands that have water rights attached.

All of us as neighbors need to understand how the purchase of these lands will affect the water rights on the Big Horn River. And I hear a lot about that from the folks in Big Horn County in Wyoming. So I am sensitive to protecting existing rights. I can understand the need to quantify and clearly assign water rights. I recognize that the Crow Tribe is trying to do the best that it can for all of its people. I think it is equally important to investigate how this legislation may impact on upstream rights and users in the State of Wyoming.

I know that Mr. Gidner, in his short statement in the record, has some objections. I am looking forward to seeing what those objections may be. I have a couple of questions to try to clarify and see if I can get a better understanding.

It seems that the land acquired by the Tribe with the aid of this loan comes with the water rights for that land. I am wondering, how will that affect the upstream users and the existing rights on the Big Horn River?

Mr. VENNE. This bill does not affect any water rights. In fact, within a couple weeks, we will be presenting our water rights settlement. I know Wyoming and Montana are talking about the flow of the Big Horn River. But the Tribe was always left out of any dis-

cussions on the river and how it flows and what is stored behind the dam.

Our water bill will take care of that. It will also satisfy the people in Montana.

Senator BARRASSO. I was wondering how the water rights which are attached to the land, if those water rights would be added to the Tribe's base and would that affect the Crow Compact in some way?

Mr. VENNE. No.

Senator BARRASSO. When I look at the document that was ratified in Montana in 1999, there is a section that explains what happens if the tribes acquire more land. I will read it, because I am not exactly sure what it means. It says, "The water right appurtenant to the land acquired shall become part of, and not an addition to the tribal water right quantified in this compact." Please help me out.

Mr. VENNE. As I see it, any person that buys any land on the Crow Reservation, they would inherit that water right. But the allocations that they are doing under the bill will keep ours stable, so it won't go up or go down. It really doesn't affect anything that I can see.

Senator BARRASSO. That was just the question, is how does this affect the upstream users, which is the folks in Wyoming?

Mr. VENNE. Our water rights settlement, when it is presented, and we will give you a copy today of that and what we are trying to do in settling that. For you to read it and understand it, I think you will agree with me that nobody is going to be hurt by this legislation.

Senator BARRASSO. Thank you. Thank you for your answers.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Chairman Sherwood, it is good to see you here in Washington, D.C. I thank you for your continued efforts in this area. I wanted to ask you a few questions about the difference in this legislation versus past legislation.

It is my understanding that this legislation is different in the way it treats some of the boundaries, and that particularly this time we have county commissioners from Lincoln and Stevens County and the Eastern Washington Council and City of Spokane who are also enthusiastic about this legislation. Could you tell me what is different and how this has garnered their support?

Mr. SHERWOOD. We faced opposition initially from Lincoln County. I think a lot of it was misunderstanding. One of the things we have done is we worked with the State of Washington, we worked with Lincoln County to actually come up with agreements on how we would enforce, and actually how we would protect the people of the river.

Right now there is a lot of questioned areas as far as law enforcement goes, whose jurisdiction is where. So what we try to do is work with the counties to make sure it is a seamless lake, it is a recreation area used by people from all over the Country. It is an important part of our economic growth. We have worked hard to make sure that we work with the surrounding communities to pro-

vide the best type of service we can to the people who utilize Lake Roosevelt.

Senator CANTWELL. Does that include an agreement with the Washington Department of Fish and Wildlife?

Mr. SHERWOOD. We have an agreement in principle if this legislation goes through with the Washington Department of Fish and Wildlife.

Senator CANTWELL. Mr. Gidner, I am trying to understand your testimony as it relates to the legal claim issue. Congress obviously explicitly directed the Department of Interior to give just and equitable compensation to those who had been impacted. How are you saying that the Spokane Tribe, similar to the Colville Tribe, has not been impacted?

Mr. GIDNER. I did not say, Senator, that they had not been impacted.

Senator CANTWELL. I am asking you, how are you filling that mandate that was a directive of Congress to compensate those who were impacted?

Mr. GIDNER. I guess I am not sure about the mandate. I know the Federal Power Act directed compensation or revenue sharing if a private developer had built a plant. This is the Federal Government, so that section did not apply.

Senator CANTWELL. I think legislation enacted in 1940 directed the Secretary of Interior to determine if just and equitable compensation for tribal lands taken as a result of the Grand Coulee Dam projects. I think we are talking about a situation here where we have given just and equitable compensation to one impacted tribe and not to another.

Mr. GIDNER. My understanding is, if that is the case, those claims were processed in the Indian Claims Commission and the statute of limitations expired and the Spokane Tribe did not amend their claim to include these. They settled their pre-existing claim. So at this point, there is not a legal claim to compensation for that.

Senator CANTWELL. I think that is why we are here today and we have legislation, is that this has been an ongoing dispute where you have a very direct mandate from Congress to make sure that everybody is compensated and you are tying the Spokanes on a technical issue. I think the Colvilles actually amended a separate claim. I think they were in the same situation, isn't that right, Mr. Sherwood?

Mr. SHERWOOD. Yes. We settled our claim, it was in 1967. We settled our claim. The Colvilles actually didn't settle their claim, so they amended their claim in 1975. We had no claim to amend. But the statute of limitations actually expired in 1951. So both tribes were in the same boat. We settled our claim, the Colvilles didn't, so they were actually allowed to amend their claim later on.

Senator CANTWELL. So for that technical ability, I still say that we have a directive here by Congress that is not being met, and that is to give just and equitable compensation. That is, in fact, I think the need for this legislation.

I thank the Chair.

The CHAIRMAN. Thank you.

Vice Chair Murkowski, did you have any questions?

Senator MURKOWSKI. Thank you, Mr. Chairman. I don't have any specific questions of the panel. I was intending to ask Mr. Sherwood for clarification in terms of what is different between the legislation as we have it now and what we have seen in the past. I appreciate the clarification and I appreciate your leadership on this issue and your efforts on behalf of the Spokane Tribe.

Mr. Venne, I appreciate all that you do on behalf of your tribe as well, as you attempt to get these issues resolved.

I am appreciative of you, Mr. Chairman, for holding the hearing so that we can resolve, or attempt to resolve through legislation, some of these issues that many of these tribes have been dealing with for a long time.

The CHAIRMAN. Senator Murkowski, thank you very much.

These are smaller pieces of legislation for the Committee, and yet very large issues for individual tribes, because they have been working, in many cases, for years. The issue of fractionation is a very significant issue, and the issue of just and fair compensation, I would say, is equally significant. We on the Committee want to have these hearings and begin trying to move some of these bills. It is not that we would disregard Mr. Gidner at all. The Interior Department, however, has testified previously on many of these issues.

I just want to say that often the Department's testimony is, well, we have not reached conclusions on negotiations. Then when you find out how long the negotiation has been going on, the answer is years. It is not lost on us, Mr. Sherwood, when Senator Barrasso observes that your great-grandfather came to the Congress and then your father and now you come to the Congress. It describes the difficulty of getting resolution, getting things done, getting solutions and answers. I think your tribes are asking for tools and opportunities to move ahead, solve problems, move ahead, give you opportunity as a result.

We appreciate very much the two tribes that have testified on the first panel. My understanding is that you do have some transportation issues that you are to attend to, some airplanes to catch. So, we will release you. If you do have time to stay, you are welcome to do so.

We will invite the other witnesses to come forward. We will hear from them and then we will question Mr. Gidner. We appreciate both of you very much for appearing before the Committee today.

We will call the second panel forward. Mr. Gidner will remain.

The second panel is the Honorable Mark Macarro. He is the Tribal Chairman of the Pechanga Band of Luiseño Mission Indians in California. The Honorable Aaron Payment, Chairman of the Sault Ste. Marie Tribe of Chippewa Indians in Michigan. The Honorable Benjamin Nuvamsa, Chairman of the Hopi Tribe in Arizona. And Mr. Raymond Maxx, Navajo Nation Council Delegate and Chairman of the Navajo Hopi Land Commission, Navajo Nation Council at Window Rock, Arizona.

We appreciate very much all of you coming to the Congress and to the Indian Affairs Committee. You have heard that we would ask you to summarize your statements. Your entire statements that each of you provided us will be made a part of the permanent record of this Committee.

Let me ask Mr. Mark Macarro, Tribal Chairman of the Pechanga Band of Luiseño Mission Indians in California, to proceed.

STATEMENT OF HON. MARK MACARRO, TRIBAL CHAIRMAN, PECHANGA BAND OF LUISEÑO MISSION INDIANS

Mr. MACARRO. Chairman Dorgan, Vice Chair Murkowski, Senator Barrasso, Senator Tester and Senator Cantwell, my name is Mark Macarro, I am the Tribal Chairman for the Pechanga Band of Luiseño Mission Indians in Temecula, California. We are in Southern California about 60 miles north of San Diego County.

Our aboriginal land territory used to encompass from where Temecula is today an area 30 miles to the north, 30 miles to the south and about 45 miles east to west, out to the ocean to the west and into the mountains to the east. Today we have 5,500 acres.

The Pechanga Band of Luiseño Mission Indians is respectfully asking your support of H.R. 2963, the Pechanga Mission Indian Lands Transfer Act of 2007. If passed into law, this bill would protect approximately 1,178 acres of land in Riverside County adjacent to our existing reservation by transferring it into trust for the benefit of the Tribe.

It is because of our history and cultural affiliation with these lands that the passage of H.R. 2963 is so important to the Tribe. Our identity and existence as Luiseño people is dependent upon the connection, maintaining the connection and protection of these ancestral lands. Today, our tribal government operations, such as our environmental monitoring and our natural resources management programs exist to fully honor and to protect the land and our culture that exist on it.

In particular, we are concerned about also watershed and wellhead protection and groundwater resources, and the availability of water for our community. The land that would be placed under trust in H.R. 2963 is part of the recharge area for some of these resources, and would help protect the quality and ensure an adequate supply of water for the Tribe and surrounding communities.

These lands are also unique and important in terms of the cultural resources that they encompass. They include pictographs and petroglyphs that are unique not only to Luiseño Country but I think to all Indian Country. While these lands have a unique historical and cultural value for the Pechanga people, they are also important for the broader aesthetic, the visual aesthetic value to the communities throughout the Temecula Valley.

The Tribe is very proud of our protection of cultural resources on our tribal properties and throughout our ancestral lands, which we no longer own. The Tribe is proud that we have preserved and protected these cultural places on lands in a culturally appropriate manner. More appropriately, we are proud that we have given these resources a level of protection that they would not have received had they been subjected to outside standards. I think even under the best of circumstances, many of these standards simply mitigate destruction rather than protect.

So the Tribe is ever vigilant to protect our cultural resources, since we now own only a tiny fraction of the lands that once belonged to us, and because most of these resources have already

been lost to development off the reservation in non-tribal jurisdictions.

As stewards of our traditional tribal lands, the Tribe will continue to ensure responsible management of the lands upon transfer. For example, although the lands in question will not be subject to the Riverside County multi-species habitat conservation plan, the MSHCP, once they have been transferred to the Tribe, the Tribe has agreed in its MOU with the Fish and Wildlife Service to manage the land in a manner consistent with the goals of the locally-derived MSHCP. Protecting the sanctity of these lands through our conservation and resource management is the highest priority for the Tribe. Our mandate is to protect and enhance the sustainability and well-being of the Pechanga way of life. Accordingly, the tribal government issued an executive order, which has zoned the land to be transferred under H.R. 2963 for conservation and management of wildlife and cultural values. Such zoning would make any commercial or other significant development of the lands contrary to tribal law.

Recognizing the importance of these lands to the Pechanga people, the Tribe began in 1990 working the administrative process with the BLM. It was a local scoping hearing that BLM conducted, beginning in 1990, for this parcel which it had targeted at that time for disposal. The parcels come on and off that disposal list. But administratively, we have been working for about 18 years through that process.

During the 108th Congress, well, actually in 2004 it was Congressman Darrell Issa who was approached by the BLM out of interest to see if he could carry a bill that would transfer the land to us. They knew at the time that we were interested in obtaining and managing that land. They were looking to help release some of the management burden. There were dozens upon dozens of disparate parcels of land in Southern California that has its management challenge for the BLM. So it appeared to be a win-win for everybody.

During the 108th Congress, H.R. 4908, a bill which was substantially similar to H.R. 2963, was introduced to the House, and H.R. 4908 was not passed by the House due to concerns expressed by San Diego County late in the process. During the 109th Congress, the Pechanga Band made extensive efforts to work with all affected parties to iron out any concerns or miscommunications regarding the provisions of H.R. 3507, which also passed out of the House of Representatives.

We resolved all concerns expressed by parties of which we were aware, which included concerns raised by the counties of Riverside and San Diego. Also during the 109th Congress, it was discovered that a power line runs across the southwest corner of the BLM parcel. The BLM and the owner of the power line, Semper Energy, have agreed to language that addresses the identification and disposition of 12.82 acres that encompasses the power line.

In the 110th Congress, the BLM remains supportive of this trust transfer, which is now embodied in H.R. 2963.

In closing, I would like to thank you for the opportunity to address you. On behalf of the Pechanga Band of Luiseño Indians, I

respectfully request that you support H.R. 2963. Thank you for your time.

[The prepared statement of Mr. Macarro follows:]

PREPARED STATEMENT OF HON. MARK MACARRO, TRIBAL CHAIRMAN, PECHANGA BAND OF LUISEÑO MISSION INDIANS

Good morning Chairman Dorgan and Vice-Chairperson Murkowski. Thank you for the opportunity to provide testimony on behalf of the Pechanga Band of Luiseño Mission Indians.

The Pechanga Band of Luiseño Indians respectfully requests your support of H.R. 2963, the Pechanga Band of Luiseño Mission Indians Land Transfer Act of 2007. If passed into law, this bill would protect approximately 1178 acres of land in Riverside County, California, adjacent to our existing reservation, and important to the Luiseño people, by transferring it into trust for the benefit of the Tribe.

The Tribe has called the Temecula Valley home for more than 10,000 years and 10,000 years from now, tribal elders will share with tribal youth, as they do today, the story of the Tribe's creation in this place. Since time immemorial, through periods of plenty, scarcity and adversity, the Pechanga people have governed ourselves and cared for our lands. This land is witness to our story.

The history of the Tribe begins with our ancestral home village of Temeeku, which was a center for all the Payomkawichum, or Luiseño people. After the establishment of the state of California in 1850, a group of Temecula Valley Ranchers petitioned the District Court in San Francisco for a Decree of Ejection of Indians living on the land in Temecula Valley, which the court granted in 1873.

In 1875 the sheriff of San Diego County began three days of evictions. The Luiseño people were taken into the hills south of the Temecula River. Being strong of spirit, most of our dispossessed ancestors moved upstream to a small, secluded valley, where they built new homes and re-established their lives.

A spring located two miles upstream in a canyon provided them with water. We have always called this spring Pechaa'a, which comes from pechaq, which means to drip. This spring is the namesake for Pechaa'anga or Pechaanga, which means "at Pechaa'a" or "at the place where water drips."

On June 27, 1882, seven years after being evicted, the President of the United States issued an Executive Order establishing the Pechanga Indian Reservation. Several subsequent trust acquisitions were made in 1893, 1907, 1931, 1971 and 1988, each one increasing the size of the reservation.

At present, the total land area of the Pechanga reservation is approximately 5,500 acres. As a people of this ancestral land that spreads from the center of Temecula out 60 miles north and south and approximately 45 miles east to west, we have always been respectful of and responsible for the environmental, social and economic relationships that exist upon it.

It is because of our history and cultural affiliation with these lands that the passage of H.R. 2963 is so important to the Tribe. Our identity and existence as Luiseño people is dependent upon our connection to and protection of these ancestral lands.

Today, our tribal government operations, such as our environmental monitoring and natural resource management programs, exist to fully honor and protect the land and our culture upon it. In particular, we are concerned about watershed and wellhead protection for our surface and ground water resources and the availability of water for our community. The land that would be placed into trust under H.R. 2963 is part of the recharge area for some of these resources and would help protect the quality and ensure an adequate supply of water for the Tribe and surrounding communities.

These lands are also home to important cultural resources, including pictographs and petroglyphs unique, not only to Luiseño territory, but to all of Indian country and our Nation. While these lands have a unique historical and cultural value for the Pechanga people, they are also important for their broader aesthetic value to communities throughout the Temecula Valley. The Tribe is very proud of our protection of cultural resources on our tribal properties and throughout our ancestral lands. Our Cultural Committee has a well-deserved reputation for thoroughness and strictness in its demands for protection of cultural resources. The Tribe is also very proud that we have preserved and protected all of our cultural places on tribal lands in a culturally appropriate manner. More importantly, we are proud that we have given these resources a level of protection they would not receive if they were located outside of the reservation boundaries, even in the best of circumstances. The Tribe is ever vigilant to protect our cultural resources since we now own only a tiny

fraction of the lands that once belonged to us and because most of these resources have already been lost to development in non-tribal jurisdictions.

As stewards of our traditional lands, the Tribe will continue to ensure responsible management of the lands to be transferred. For example, although the lands in question will not be subject to the Riverside County Multi Species Habitat Conservation Plan (MSHCP) once they have been transferred to the Tribe, the Tribe has agreed in its MOU with Fish & Wildlife to manage the land in a manner consistent with the goals of the MSHCP. In fact, when questions came up about the Tribe's development of a golf course on a portion of similar tribal lands, the Tribe commissioned a MSHCP consistency analysis by a County approved MSHCP consultant which concluded that the Tribe's treatment of the property in question is consistent with meeting and/or exceeding the MSHCP goals for development within that geographical area.

Although we have always believed in the sanctity of our lands, and have planned carefully for the use and preservation of our land, one environmental group has recently questioned our adherence to the National Environmental Policy Act and our development efforts on the reservation.

After conversations with the representative of this group, we found their objections to be unwarranted, insulting and disturbing. The criticism is aimed specifically at a parcel, known as the Great Oak Ranch parcel, which was transferred to the Tribe through the administrative fee-to-trust process. In 2002, the Tribe succeeded in preventing a major power line from being situated on this parcel, the Great Oak Ranch. The Tribe, along with the surrounding community averted an environmental impact which would have left a lasting imprint on the lands of the Pechanga people and the Temecula Valley.

We assure you the Tribe has devoted significant tribal resources ensuring the use of our lands adheres to the principles of the National Environmental Policy Act, the MSHCP and California environmental laws. We have long-standing cooperative and supportive relationships with our local environmental groups and our local governments, and have made every effort to coordinate our planning and gain their support for Tribal projects which affect the community.

Protecting the sanctity of these lands through conservation and resource management is of the highest priority for the Tribe. Our mandate is to protect and enhance the sustainability and well being of the Pechanga way of life. Accordingly, the tribal government also issued an Executive Order zoning the land to be transferred under H.R. 2963 for conservation and management of wildlife and cultural values. Such zoning would make any commercial or other significant development of the lands contrary to tribal law.

Recognizing the importance of these lands to the Pechanga people, the Tribe began working with the Bureau of Land Management (BLM) nearly 15 years ago to place these lands into trust. In the spring of 2004, the BLM indicated to Congressman Darrell Issa (R–CA) their willingness to transfer the land. In response to the BLM, Congressman Issa introduced legislation to transfer the land to the Tribe.

During the 108th Congress, H.R. 4908, a bill which was substantially similar to H.R. 2963, was introduced in the House of Representatives. H.R. 4908 was not passed by the House due to concerns expressed by San Diego County late in the process.

During the 109th Congress, the Pechanga Band of Luiseño Indians made extensive efforts to work with all affected parties to iron out any concerns or miscommunication regarding the provisions of H.R. 3507, which also passed out of the House of Representatives. We resolved all concerns expressed by parties of which we were aware, including concerns raised by Riverside and San Diego Counties. Concerns regarding management of the lands expressed by the U.S. Fish and Wildlife Service were resolved through language in the legislation regarding the management of and purposes for which the transferred land may be used and through the execution of a formal Memorandum of Understanding, signed by the Bureau of Land Management, the Fish and Wildlife Service and the Pechanga Band of Luiseño Indians.

Also during the 109th Congress, it was discovered that a power line runs across the southwest corner of the parcel. The BLM and the owner of the power line, Sempra Energy, have agreed to language that addresses the identification and disposition of the 12.82 acres that encompasses the power line. That language has been incorporated into the current bill in front of you today, H.R. 2963.

In the 110th Congress, the Bureau of Land Management remains supportive of this trust transfer, now embodied in H.R. 2963. We have also received the support of the City of Temecula, which is adjacent to the property, in the form of a resolution passed by the City Council.

In closing, I thank you for the opportunity to address you, and, on behalf of the Pechanga Band of Luiseño Mission Indians, I respectfully request your support for H.R. 2963. Thank you for your time and consideration of this matter.

The CHAIRMAN. Mr. Chairman, thank you very much. You too have a history of appearing before our Committee. We appreciate very much your being here.

We will hear now from the Honorable Aaron Payment, who is the Chairman of the Sault Ste. Marie Tribe of Chippewa Indians in Michigan.

STATEMENT OF HON. AARON PAYMENT, CHAIRPERSON, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

Mr. PAYMENT. Good morning. My name is Aaron Payment. I am the democratically-elected chairperson of my Tribe, the Sault Ste. Marie Tribe of Chippewa Indians.

I would like to thank the Committee for the opportunity to present my testimony on H.R. 2120. This bill is important to my Tribe, because as I see it, it is simply an effort to correct a failure on behalf of the BIA to properly exercise its trust responsibility to my Tribe.

My Tribe is the largest east of the Mississippi, with 38,000 members. We were recognized in 1972 after a 20-year struggle. The Treaty of Washington in 1936 recognized my Tribe's aboriginal territory, which is where we have resided since time immemorial and where we continue to reside.

Our service area includes the seven eastern counties in the Upper Peninsula of Michigan. About 12,000 of our members reside in our service area, with 64 percent of our members residing outside of our service area. Since receiving recognition in 1972, my Tribe has engaged in the arduous task of re-acquiring land in our original territory to meet the needs of our members.

The present-day trust land of my Tribe is just over 1,000 acres. Again, that is 1,000 acres. Earlier today you had testimony on the volume of acres, we have just 1,000 acres. Five hundred sixty-seven acres are located in six separate sites within our treaty territory. All of these lands are held in trust by the United States for the benefit of my Tribe and are recognized as Indian Country subject to tribal and Federal jurisdiction.

On these lands, we operate our tribal government and administrative programs, housing, health, social services and law enforcement and tribal businesses. Of the 1,600 acres that are held in trust, only 125, or a mere 8 percent, have been formally proclaimed as a reservation.

H.R. 2120 concerns one piece of land, approximately 65 acres, just south of St. Ignace, Michigan, that my Tribe purchased in 1982. In 1983, we requested that the United States proclaim this land Indian land under the Indian Reorganization Act. The United States took this land into trust in 1983 but never proclaimed it a reservation, despite the fact that my Tribe twice requested that it be proclaimed a reservation. H.R. 2120 would correct this egregious oversight.

In May, 1988, my Tribe opened the Kewadin Shores Casino on the 1983 parcel we acquired. Because we did not have a great deal of resources at the time, we chose to open our Kewadin Shores Ca-

sino in an existing building. Over time, we have added on to that structure. However, this casino became an unwieldy hodge-podge of add-ons. The old facility posed significant health hazards for our 406 employees, because we have low ceilings and poor circulation and also and also health hazards due to cigarette smoke.

Given the limitations of this facility, we decided to build a new facility. Looking at our land holdings, we determined that it was not in our best interest to build on the same land as our existing facility. Building the gaming space, lobby, hotel space on the 1983 parcel would have meant that we would have had to dislocate several tribal families and other governmental programs on the small parcels of land that we do have. Additionally, building on the same location would mean significant loss in revenue during the construction.

The new building was instead built partially on the 1983 parcel and partially on a piece of land contiguous to the 1983 parcel, which my Tribe acquired and placed into trust in 2000. The Indian Gaming Regulatory Act provides the land taken into trust prior to October 17, 1988 is eligible for gaming if such lands are located within or contiguous to the boundaries of the reservation, on October 17, 1988. The 1983 parcel, while not officially proclaimed a reservation, has always been treated as a reservation by both my Tribe and the United States. These lands were set aside by the United States for the use and benefit of my Tribe. Our people live, work and receive services on these lands. These lands are under civil and criminal jurisdiction of the United States and my Tribe. To my knowledge, there is no other criteria under Federal law that distinguishes the difference between trust and reservation status.

The inability to use our land as we believe it should be used is entirely due to the inaction of the United States. My Tribe requested on at least two occasions, in 1986 and April 1988, both prior to the enactment of IGRA, that the United States proclaim the 1983 parcel a reservation. Prior to the enactment of IGRA, the United States got so far as to inform the local governments that a reservation proclamation was impending. Again, prior to IGRA, the United States acknowledged that a reservation request was impending.

As we understand it, only the ministerial act of publishing the notice in the Federal Register was not done. In a supportive document from Terry Virden, BIA Regional Director in Minneapolis, the BIA acknowledges that my Tribe complied with all the applicable procedures prior to the enactment of IGRA, and that administrative oversight is likely to blame.

H.R. 2120 would do what the United States said it was going to do in 1988. My Tribe has made a significant investment of over $41 million to build our new casino to provide a safe and healthy environment for our 406 employees and customers, so that we can continue to be the economic engine in our area of the State. We did this on land that is in trust and is contiguous to land that is in trust since 1983.

The new replacement casino would not increase gaming and would not add to the number of casinos now operating in Michigan. However, according to the Department of Interior, the only way that the Tribe can operate on this land without negotiating with

the State is through this legislation. We have the support of the BIA and all local governments, and also the Little Traverse Bay Band, our brother and sister tribe that is near us, for this legislation. We would urge expedited consideration of this legislation, so that we can finally use our building for what it was intended.

Again, I would like to thank the Committee for its time and attention to this matter, and now I would be happy to answer any questions you might have of me.

[The prepared statement of Mr. Payment follows:]

PREPARED STATEMENT OF HON. AARON PAYMENT, CHAIRPERSON, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

My name is Aaron Payment, I am the Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe). I would like to thank the Committee for the opportunity to present this testimony on H.R. 2120. I would also like to thank the Michigan delegation for supporting this legislation.

This bill is important to my Tribe because as I see it, it is simply an effort to correct a failure of the federal government to properly exercise its trust responsibility to my Tribe. Importantly, the Federal District Court in Michigan agrees with us and has enjoined the United States from enforcing its decision that the land in question is not a Reservation under federal law. *Sault Ste. Marie Tribe of Chippewa Indians v. United States of America,* 2:06–cv–276 (Western District, MI) (2007). I attach a copy of this decision for the record. Equally as significant the Department of the Interior has testified in support of this legislation.

The Sault Tribe reestablished its relationship with the Federal Government in 1972 after twenty long years of seeking federal recognition. The Treaty of March 28, 1836, 7 Stat. 491, with the Chippewa and the Ottawa Bands of Northern Michigan, recognized my Tribe's aboriginal territory. Now, our service area includes Chippewa, Mackinac, Luce, Schoolcraft, Alger, Marquette and Delta Counties. We are a descendancy Tribe with the number of enrolled members now approaching 33,000. Approximately 12,000 reside in the service area. Since receiving recognition in 1972, my Tribe has engaged in a systematic process to reacquire land in the Upper Peninsula of Michigan within our service area to meet the needs of our members who live in our traditional territory.

The present day trust land of my Tribe is just over a thousand acres located in the City of Sault Ste. Marie and approximately 567 acres located in six separate sites within our treaty territory at Manistique, Wetmore, St. Ignace, Hessel, Marquette and Escanaba, Michigan. All of these lands are held in trust by the United States for the benefit of my Tribe and are recognized as "Indian Country" subject to tribal and federal jurisdiction pursuant to the 18 U.S.C. § 1151.

On these lands, we operate our tribal government and administrative programs, housing programs, health programs, social service programs, law enforcement, and tribal businesses. Of the 1,600 acres held in federal trust, only 124.8 acres have been formally proclaimed as reservation. That is less than 8 percent. As is the case with many tribes recognized in the last thirty years, we are a land poor tribe when you consider the number of members per acre. Only 500 of our 33,000 members (or about 1.5 percent) reside on our reservation. Only 4 percent of those who reside in our service area (500/12,000) are able to reside on the reservation given our limited land base.

H.R. 2120 concerns one piece of land (approximately 65 acres) that the Tribe purchased in St. Ignace, Michigan. In 1983, we requested that the United States take into trust and proclaim this land as a reservation under the Indian Reorganization Act of 1924, 25 U.S.C. §§ 465, 467 ("1983 Parcel"). The United States took this land into trust in 1983 but never proclaimed it a reservation. This is so despite the fact that the Tribe twice requested that it be proclaimed a reservation. H.R. 2120 would correct this egregious oversight.

In 1986, we opened the Kewadin Shores Casino on the 1983 Parcel. Because we did not have a great deal of resources at this time, we elected to open the Kewadin Shores Casino in an existing building. After the enactment of the Indian Gaming Regulatory Act, my Tribe entered into a compact with the State of Michigan in 1993. Over time we added to the existing structure. However, this casino became an unwieldy conglomeration of add-ons. This type of facility composition posed significant health hazards to our 406 employees, because there was poor air circulation and ventilation due to cigarette smoke and concentrated population. There were also

serious sewage problems with this facility and its location. Finally, the internal maze like flow within the building was not good for our customers and the outside appearance was equally unappealing.

Given the limitations of this facility, we decided to build a new building. In looking at our land holdings, the Board determined that it was not in the Tribe's best interest to build on the same spot as the old facility because building the gaming space, lobby and hotel space on the 1983 parcel would mean having to dislocate several tribal families and other governmental programs from the land. Additionally, building on the same location would mean losing revenue during construction. The casino was instead built on a piece of land immediately adjacent to the old casino, which the Tribe acquired in trust in 2000 ("2000 Parcel").

As I understand it, the previous Administration believed that the Tribe could do gaming on the 2000 Parcel, because a provision in the Indian Gaming Regulatory Act that states that land taken into trust after October 17, 1988 are eligible for gaming if "such lands are located within or contiguous to the boundaries of the reservation of the Indian Tribe on October 17, 1988." 25 U.S.C. § 2719(a)(1).

I am advised that under the Supreme Court precedent, the 1983 Parcel is a reservation. The Supreme Court has held that "the principal test" for determining whether Indian land constitutes a reservation is "whether the land in question 'ha[s] been validly set apart for the use of the Indians as such, under the superintendence of the government.'" *United States v. John,* 437 U.S. 634, 648–49 (quoting *United States v. Pelican,* 232 U.S. 442, 449 (1914)). In another case, the Court has said no "precedent of this Court has ever drawn the distinction between tribal trust land and reservations and that the dispositive question was whether the "area has been 'validly set apart for the use of the Indians as such, under the superintendence of the Government.'" *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991) (quoting *John*). The 1983 Parcel is clearly land set aside for the use of Indians and has been under the superintendence and jurisdiction of the United States since 1983.

In 2003 the Tribe asked the Department of the Interior to concur with this view. In February of 2006, we finally received an opinion from the Interior Solicitor's Office stating that notwithstanding the fact that the 1983 Parcel was set aside for the Tribe and is under the jurisdiction of the United States, because the United States had never proclaimed it a reservation, it did not meet the definition of a reservation under federal law. Accordingly, the Acting Associate Solicitor determined that the 2000 Parcel was not land contiguous to a Reservation under IGRA.

By this time, we were close to finishing our new building, which was to be a new hotel and casino with a state-of-the art air filtration system. We held numerous meetings with Interior officials to urge them to correct their decision and rectify a problem that was created by the government's own inaction. This was to no avail. The NIGC warned us that if we operated in the new building, they would issue a closure order.

However, because the old facility was so unsafe, we elected to invest $3 million and put the Kewadin Shores Casino in a temporary building (or sprung structure), which was entirely on the 1983 Parcel, but is adjacent to the new casino building on the 2000 Parcel. While operating in the interim facility, the Tribe brought suit against the United States, challenging Interior's determination that the 1983 Parcel was not a Reservation.

In August of 2007, the Federal District Court for the Western District of Michigan granted the Tribe a preliminary injunction against the United States and permitted the Tribe to open in the new facility. The Court's basis for its preliminary ruling rested on a number of factors one of them being the high likelihood that the Tribe would prevail on the merits that the 1983 Parcel is a Reservation under federal law. The other factor was the negative impact on the Tribe if it could not operate in the new facility. We are now operating in the new facility.

We are currently still in Federal Court. The briefing on the merits on this case is now complete. We are hopeful for a positive outcome. I know the question for the Committee is why do we need the legislation if we are hopeful about our litigation?

First, there is no guarantee in any litigation. Second, this litigation is very costly for the Tribe. Even if we win at the District Court level, there will be an appeal. This legislation moots the need for this costly litigation and will make things as they should have been when the Tribe asked that this land to be proclaimed a Reservation more than a decade ago.

Finally resolving this matter without further litigation is vital to us. My Tribe spends 97 percent of our net revenue on membership services to make up for the shortfall of federal funding. The loss of income that could result if we are forced to close the new facility and reopen in another structure will likely result in a cut in membership services.

Moreover, tribal members and non-Indians alike in the local community could lose their jobs at the Kewadin Shores Casino. Forty five percent of all our casino employees are non-Tribal. Approximately $13.5 million of our $30 million payroll supports jobs for those who are not Tribal members, which underscores that this not simply an Indian problem. Jobs we provide afford great benefits, like retirement and health care. Jobs for which individuals pay taxes and re-circulate excess income in an already stagnating economy. We currently employ about 20 percent of the adult workforce of the local city of St. Ignace—a tourism town. Job losses will result in additional burdens on the Tribe's and State's social services as those who lose their jobs will turn to Tribal and State support programs.

The inability to use our land as we believe it should be used is entirely the fault of the United States. The Tribe requested two different times (1986 and April, 1988—both prior to the enactment of IGRA in October 1988) that the United States proclaim the 1983 Parcel a reservation. In 1988, the United States got so far as to inform the local governments that a reservation proclamation was "impending." As we understand it, only the ministerial act of publishing the notice in the Federal Register was not done.

In a supportive document from Terry Virden, BIA Regional Director in Minneapolis, the BIA acknowledges that the Tribe complied with all applicable procedures prior to the enactment of IGRA in October of 1988 and that an administration oversight is likely to blame. Why this land was not proclaimed a reservation, we do not know, but we do not believe that the Tribe or the people of the Upper Peninsula should have to pay for this failure.

H.R. 2120 would do what the United States said it was going to do in 1988 and what it should have done in 1983 or even 1986. My Tribe has made a significant investment of $41 million to build this new casino to provide a safe and healthy place for our 406 employees and customers and to continue to be the economic engine of this area of the State. We did this on land that is held in trust and is contiguous to land that has been in trust since 1983. The new replacement casino does not increase gaming. Nor does it add to the number of casinos now operating in Michigan. However, according to the Department of the Interior, the only way that the Tribe can operate a casino on this land—without negotiating with the state—is this legislation. We have the support of the city, township and county governments, and the neighboring tribe of just thirty miles–the Little Traverse Bay Band of Odawa Indians–for this legislation.

Again, I would like to thank the Committee for its time and attention to this matter.

Attachments

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS,

Plaintiff,

v.

Case No. 2:06-cv-276
HON. R. ALLAN EDGAR

UNITED STATES OF AMERICA, et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION

The Sault Ste. Marie Tribe of Chippewa Indians (hereinafter "the Tribe"), filed this action against the United States of America, the United States Department of the Interior (hereinafter "the Department"), Secretary of the Interior Dirk Kempthorne, and Philip N. Hogen, Chairman of the National Indian Gaming Commission (NIGC). The Complaint was filed on November 8, 2006, pursuant to the Administrative Procedures Act , 5 U.S.C. §§ 701-06, challenging the NIGC's final decision and order disapproving a proposed amendment to the Tribe's gaming ordinance that would have permitted gaming on a parcel of land in St. Ignace, Michigan. Presently before the Court is Plaintiff's motion for preliminary injunction, seeking an order from this Court which would permit the Tribe to operate its replacement casino pending final determination by this Court of the claims presented in this lawsuit. The parties have fully briefed the issues presented and arguments were presented to the Court on June 27, 2007. By order dated May 25, 2007, this matter was referred to the undersigned for a Report and Recommendation.

FACTS

Sometime in 1986, a casino was opened by the Tribe in St. Ignace, Michigan, on lands taken into trust in 1983. This land is referred to as "the 1983 parcel." The casino opened in 1986 and was expanded on several occasions with add-on facilities. Eventually, the Tribe concluded that the casino facilities provided inadequate heating, ventilation, air conditioning and sewage disposal, and that the casino had to be replaced. The Tribe concluded that to continue to be competitive in the gambling market, it needed to construct a state of the art casino, hotel and restaurant in St. Ignace. In July of 2003, the Tribe sent a letter to the local office of the Bureau of Indian Affairs (BIA), indicating that it wanted to construct a new casino that straddled a parcel of land where the Tribe's current casino was located and another parcel of land taken into trust in 2000 (hereinafter "the 2000 parcel"). The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2107, *et. seq.*, prohibits gaming on land acquired into trust by the United States for the benefit of a tribe after the Act's effective date of October 17, 1988. The casino built in 1986 was located on a parcel of land taken into trust in 1983 and was therefore eligible for gaming. The parcel of land taken into trust in 2000 was acquired in 1992. To establish that it was authorized to construct a casino on the 2000 parcel, the Tribe sent a letter in July of 2003 requesting that it be authorized to construct a casino that straddled the 1983 parcel and the 2000 parcel. The letter the Tribe sent to Defendants indicated that the Tribe believed the 2000 parcel fit within one of two exceptions to the IGRA, which would permit the Tribe to conduct gambling on the 2000 parcel. First, the Tribe maintained that the 2000 parcel was located "contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988," 25 U.S.C. § 2719(a)(1). The Tribe also maintained that the 2000 parcel was land taken into trust as part of "the restoration of lands for an Indian tribe that is restored to federal recognition." 25 U.S.C. § 2719(b)(1)(B)(3)(I).

In August of 2003, the BIA Midwest Regional Director sent a letter to the Tribe requesting additional information and indicating that "several issues which will require further legal analysis" were presented by the Tribe's request. In November of 2003, the Tribe submitted the additional information requested. During the next seven months, the Tribe sent two letters to Defendants requesting that Defendants notify the Tribe of Defendants' decision at its "earliest convenience" so that the Tribe could stay on its current construction schedule for a new casino. The first letter included a statement that the Governor of the State of Michigan's legal counsel indicated that "while the issue is not free from doubt, we agree that a court could find that this original parcel constitutes a reservation for purposes of IGRA." In a letter sent by the Tribe on June 14, 2004, to George Skibine, Director of the Office of Indian Gaming Management, the Tribe described its prior efforts to obtain a legal opinion from the Department and reiterated its position regarding the application of the two exceptions that it believed entitled the Tribe to build a casino straddling the 1983 and 2000 parcels. The Tribe received a response to this letter from NIGC Acting General Counsel Penny J. Coleman, requesting additional information from the Tribe. On July 1, 2004, the Tribe responded to Attorney Coleman's request. Administrative Record at page 101 (hereinafter "AR at ___"). On July 30, 2004, Attorney Coleman sent the Tribe a letter indicating that there were "serious questions as to whether the lands constitute Indian lands on which the Tribe may conduct gaming." AR at 186. In an October 2004 letter, the Tribe was "advised against beginning construction of the facility until the Indian lands question is resolved." AR at 194. Again, the NIGC requested additional information, and that information was provided by the Tribe in November of 2004. The Tribe went forward with its plans to construct a new casino and in 2004 the Tribe approved the borrowing of $41 Million to fund this new facility. Construction began sometime in the Summer of 2004. At some point, the Tribe agreed that Defendants should consider the

applicability of the contiguous to a reservation exception first, as that request was less time consuming. AR at 196. On February 14, 2006, Defendants issued an opinion finding that the 2000 parcel did not qualify as lands contiguous to a reservation because the 1983 parcel was not a reservation as of October 17, 1988, as required for the exception to apply. AR at 6. The Tribe has never maintained that the 1983 parcel had been formally proclaimed a reservation, but maintains that the 1983 parcel is a "de facto" reservation. Plaintiff's brief (docket #26) at pages 19-20, n. 7. In March of 2006, the NIGC and the Tribe discussed the Tribe's position that the Restored Lands Exception applied. The Tribe was requested to submit additional information. On July 31, 2006, the Office of General Counsel of the NIGC issued an opinion concluding that the 2000 parcel did not meet the Restored Lands Exception to the IGRA. On September 1, 2006, the NIGC issued its final decision and order, disapproving the Tribe's request that it be permitted to game on the 2000 parcel. AR at 1-5. Shortly thereafter, in September of 2006, the Tribe closed its old casino and erected a "Sprung Structure" on the 1983 parcel where gaming is presently occurring. The Sprung Structure is now connected to the $41 Million hotel and casino, which is fully constructed.

On November 8, 2006, the Tribe filed the instant lawsuit challenging the Defendants' decision denying the Tribe the right to operate the casino straddling the 1983 and 2000 parcels. On May 24, 2007, the Tribe moved for a preliminary injunction, claiming that it would suffer immediate and irreparable harm if this Court did not permit gaming at the new casino. The Tribe seeks an order from this Court enjoining the NIGC from initiating enforcement proceedings at the casino located on the 1983 and 2000 parcels.

In support of the Tribe's request for injunctive relief, the Court is provided with the affidavit of Victor Mattson, Jr., which indicates that the Sprung Structure, where gambling is presently occurring, is "an entirely inadequate facility." Affidavit at page 8. According to the

affidavit, "The heating, ventilation and air conditioning system is insufficient and the physical layout is unappealing. The Tribe has received numerous complaints from employees and customers about the Sprung Structure's air quality system." *Id.* at 8. The affidavit goes on to explain that the Tribe will lose profits and that its ability to compete in the gambling industry will be irreparably harmed. The Tribe also provides the Court with the affidavit of Paul R. VanKauwenberg, who holds a Bachelor of Science in Mechanical Engineering and is a professional engineer involved in the design, supervision and installation of infrastructure utilities for buildings of various types and designs. His affidavit compares the air filtration system in the Sprung Structure with that of the recently constructed casino. His affidavit indicates that the air infiltration system in the Sprung Structure is inadequate and does not properly change the air in the facility, resulting in a high level of smoke in the facility. The Court is also provided with the affidavit of Aaron Payment, the Tribe's Chairperson. Payment's affidavit indicates that the Tribe has suffered a loss of income as a result of the Tribe's inability to open its new casino. According to Payment, the reduced income has a negative effect on the Tribe, the local community, and the state.

Kristi Little, the Tribe's Associate Executive Director - Membership Services, provides the Court with an affidavit which explains, in part:

> Additionally, the impact of gaming in building and sustaining healthier communities in rural Upper Michigan is dramatic. Any threat or sustained gaming loss would have a considerable negative economic impact in the local communities, and in local programs and services. Partnerships and services across the Eastern Upper Peninsula that would be affected include:
>
> 1. Partnership with War Memorial Hospital for urgent care services provided at the Community Care Clinic, which is located in Sault Ste. Marie.

2. Partnerships with Mackinaw Straits Hospital, War Memorial Hospital and Helen Newberry Joy Hospital to provide dialysis services to rural areas.

3. Radiology, lab, and physical therapy partnerships with War Memorial Hospital.

4. Radiology, reference lab, and EKG services provided through agreements with Marquette General Hospital and all other local hospitals.

5. Emergency preparedness funding for joint initiatives with county and local government units.

6. Educational partnerships for student placements through local colleges and universities. Currently, the Tribe actively provides numerous nursing student rotations for ambulatory care, community health, and social workers. The Tribe also provides clerkships and rural medicine and dental rotations for medical/dental students through Michigan State University, Northern Michigan University Rural Health Extension Program, and University of Iowa.

If gaming revenues decline, all of our programs will be negatively affected. The Tribe would not be able to employ health care staff at the current level and tribal members would experience reduced levels of care or would go without needed services. Many tribal members are without health insurance and do not have the financial means to pay for healthcare.

If the Tribe must cut back on health care services as a result of reduced income from tribal gaming operations, the first health programs cut would likely be prevention and education. Obviously, this would have a negative impact on tribal members and would exacerbate existing health problems thereby negatively affecting the quality of life for the Tribe's members.

Defendants have not provided the Court with any affidavits for consideration in conjunction with the pending motion for injunctive relief.

ANALYSIS

The Sixth Circuit has explained that a court confronted with a request for injunctive relief must consider and balance four factors:

> 1. Whether the movant has shown a strong or substantial likelihood or probability of success on the merits.
>
> 2. Whether the movant has shown irreparable injury.
>
> 3. Whether the preliminary injunction could harm third parties.
>
> 4. Whether the public interest would be served by issuing a preliminary injunction.

Jones v. City of Monroe, 341 F.3d 474 (6th Cir. 2003); *Mason County Medical Ass'n. v. Knebel*, 563 F.2d 256, 261 (6th Cir. 1977). *See also Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985; *Ardister v. Mansour*, 627 F.Supp. 641 (W.D. Mich. 1986).

The Court in *Jones v. City of Monroe* explained:

> The four considerations applicable to preliminary injunction decisions are factors to be balanced, not prerequisites that must be met. *DeLorean*, 755 F.2d at 1228. Moreover, a district court is not required to make specific findings concerning each of the four factors used in determining a motion for preliminary injunction if fewer factors are dispositive of the issue. *Id.; Mascio v. Public Employees Retirement Sys. of Ohio*, 160 F.3d 310, 312 (6th Cir. 1009) (affirming the district court's grant of a preliminary injunction based on the district court's conclusion that the plaintiff had demonstrated a substantial likelihood of success on the merits).

341 F.3d at 476.

The Tribe's request for injunctive relief in this case does not seek to maintain the "status quo." In essence, what the Tribe is asking for is an order from this Court which will permit the Tribe to open its new casino without interference from Defendants. On the other hand, the Tribe's request will not determine whether or not gambling occurs in St. Ignace, as gambling is

presently occurring in the Sprung Structure. The Sprung Structure is adjacent and connected to the new casino and hotel. One court has explained:

> In some cases, however, the standard for issuance of preliminary injunctive relief is heightened. If the preliminary injunction disturbs the status quo, is mandatory as opposed to prohibitory, or affords the movant substantially all the relief he may recover at the conclusion of a full trial on the merits, the movant must carry the heavier burden of showing that the traditional four factors weigh "heavily and compellingly" in favor of granting the injunction.
>
> The term "status quo" is not defined by the parties' existing *legal rights*; it is defined by the *reality* of the existing status and relationship between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights. The Tenth Circuit has rejected an "absolute" approach to defining the status quo, instead holding that "the definition of 'status quo' for injunction purposes depends very much on the facts of a particular case." The status quo need not be the state of affairs immediately preceding the litigation. The parties' definition of the status quo is at the heart of these proceedings and very much in dispute.

Wyandotte Nation v. Sebelius, 337 F.Supp.2d 1253, 1267-68 (D. Kan. 2004) (footnotes omitted).

In *Detroit Newspaper Publisher's Assoc. v. Detroit Typographical Union No. 18*, 471 F.2d 872, 876 (6th Cir. 1972), the court explained that issuance of a preliminary injunction is the "strong arm of equity and should not occur in doubtful cases." In *Roghan v. Block*, 590 F.Supp. 150, 153 (W.D. Mich. 1984), quoting *Detroit Newspaper Publisher's Assoc.*, 471 F.2d at 876, a judge of this Court explained, "'There is no power the exercise of which requires greater caution, deliberation and sound discretion or more dangerous in a doubtful case, than the issuing of an injunction.'"

The Tribe bears the burden of establishing its entitlement to injunctive relief and, as stated above, the Court is required to consider four factors that are to be balanced in determining whether or not injunctive relief is appropriate.

Public Interest

One of the factors to be balanced is whether or not the public interest would be served by the issuance of a preliminary injunction. The Tribe maintains that the public interest would be best served by the granting of an injunction which would allow the Tribe to open its new casino. According to the affidavits filed by the Tribe, the public interest would be best be served by allowing the Tribe to open its new casino because that is in the best interest of social services, public safety and educational programs that benefit the Tribe. In addition, the Tribe maintains that the local economy would benefit by allowing the new casino to open. The affidavits presented to the Court by the Tribe, which have not been rebutted by Defendants, establish that the Sprung Structure is an unhealthy and unsafe environment and the casino's employees and patrons would benefit from a healthier and safer environment if gambling is allowed to occur in the new casino. This case does not present a question of whether or not the public is better off by not having gambling, as gambling is already occurring in the Sprung Structure. Thus, the Court is not presented with that question. The record also supports the Tribe's argument that allowing the new casino to open will allow the Tribe to better compete in the gambling market in Northern Michigan.

Defendants maintain that Plaintiff's assertion that gambling in the Sprung Structure produces less revenue is speculative. Furthermore, it is Defendants' position that it is in the public interest that the law be followed. Finally, Defendants argue that other tribes operating casinos in Michigan would benefit if Plaintiff is not allowed to open its new casino. Having carefully considered the arguments of the parties, and in particular considering the affidavits filed by Plaintiff, I conclude that the public interest factor supports Plaintiff's request for an injunction.

Harm to Third Parties

The Tribe maintains that permitting the Tribe to operate its new casino will not cause harm to any third parties. Defendants respond that other tribes will be harmed if Plaintiff is permitted to game in its new casino. This argument is somewhat inconsistent with the argument made by Defendants that Plaintiff has not shown that it faces a competitive disadvantage by being required to game in the Sprung Structure. Defendants refer the Court to the case of *Sault Ste. Marie Tribe of Chippewa Indians v. United States*, 288 F.3d 910 (6th Cir. 2002), in which the Tribe sought a preliminary injunction seeking to enjoin the Little Traverse Bay Band of Odawa Indians from gaming at a Petoskey site, arguing that allowing that tribe to game in Petoskey would affect the gaming market in St. Ignace. That case is somewhat distinguishable from the instant case in that it involved an effort to prohibit gaming in Petoskey, not change the location by a few hundred feet. More importantly, the evidence of record is sparse on the issue of whether or not the issuance of an injunction would cause harm to third parties. The evidence of record does not support a finding that third parties will be harmed should an injunction issue permitting the Tribe to operate its new casino.

Irreparable Injury

The next factor that must be considered is whether or not the Tribe will suffer irreparable injury if the requested injunctive relief is not granted. Defendants maintain that the Tribe has not shown that it will suffer irreparable injury without injunctive relief. According to Defendants, the factor of irreparable injury is the single most important factor to be considered in ruling on a motion for preliminary injunction. The Tribe has presented evidence in the form of affidavits establishing that it has suffered a loss of revenue as a result of its inability to open the new casino. The Tribe is now operating its gaming activities out of the Sprung Structure and is unable to use the casino portion of the $41 Million facility the Tribe has constructed. In most cases, a

monetary loss will not support a claim for injunctive relief as such injury would be compensated by monetary damages. In the instant case, monetary damages are not available to Plaintiff because the United States Government is the defendant. *See Grosjean v. American Press Co., Inc.*, 297 U.S. 233, 242 (1936); *Ohio Oil Co. v. Conway*, 279 U.S. 813, 814 (1929). *See also Tristano v. Federal Bureau of Prisons*, 2004 WL 5284511 (W.D. Wis.).

The Tribe has provided the Court with the affidavit of Jake Miklojcik, who possesses a Bachelor of Science Degree from Carnegie Mellon University and a Masters in Public Policy from the University of Michigan. Since the 1990s, Mr. Miklojcik has provided economic and development reports, assessments and analyses for the gaming industry. Mr. Miklojcik conducted "a detailed analysis of the Sault Tribe's gaming venues in Michigan's Upper Peninsula, including the St. Ignace site." Affidavit at page 2. The affidavit of Mr. Miklojcik provides support for Plaintiff's argument that it will suffer irreparable injury if it is not permitted to open its new casino. A second affidavit of Victor Mattson, Jr., attached to Plaintiff's reply brief (docket #33), offers additional support for the Tribe's claim that it will suffer irreparable injury if it is not permitted to operate its new casino. A decrease in revenue can have a significant impact on the governmental services available to tribal members. Defendants contend that Plaintiff's argument that it will suffer irreparable injury as a result of lost gaming revenues is speculative. However, as noted above, the affidavits submitted by Plaintiff are not speculative and support the request for injunctive relief. Defendants also argue that the injury suffered by the Tribe is self-inflicted. I conclude that this argument is somewhat disingenuous. Defendants were far from timely in their responses to the Tribe's request to resolve the legal issues presented in this case.

Having carefully considered the arguments of the parties, as well as the affidavits submitted by Plaintiff, it is my recommendation that the Court conclude that Plaintiff has established that it will suffer irreparable injury should it not be permitted to open its new casino.

Success on the Merits

The most difficult question presented by Plaintiff's request for injunctive relief is whether Plaintiff has established a likelihood of success on the merits. Plaintiff challenges two decisions made by Defendants in this action. First is the decision issued in the February 14, 2006, letter written by Edith Blackwell, Acting Associate Solicitor, Division of Indian Affairs, to Philip N. Hogen, Chairman of the NIGC. That letter concludes that the Tribe's 1983 parcel does not constitute a reservation for purposes of the IGRA and, therefore, gaming on the 2000 parcel is not permitted by virtue of being on land contiguous to a reservation pursuant to 25 U.S.C. § 2719(a)(1). The second decision is found in the memorandum dated July 31, 2006, to Philip N. Hogen from Penny J. Coleman in which Defendants conclude that the St. Ignace parcel does not qualify as "the restoration of lands for an Indian tribe that is restored to federal recognition." These decisions became the final decision and order of NIGC on September 1, 2006, in the order issued by Philip N. Hogen, Chairman, and Cloyce V. Choney, Commissioner.

The question of Plaintiff's likelihood of success on the merits presents difficult legal issues which this Court must face in ultimately resolving the questions presented by this lawsuit. In considering the likelihood of success on the merits, the first question confronting the Court is the appropriate standard of review to be given to the decisions of the NIGC. Defendants maintain that the NIGC's decisions may be set aside only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance of law." 5 U.S.C. § 706(2)(a)(1988); *see also Communities, Inc. v. Busey*, 956 F.2d 619, 623 (6th Cir. 1992). According to Defendants:

> An agency decision is arbitrary and capricious only if the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Wilson Air Center, LLC v. FAA*, 372 F.3d 807, 813 (6th Cir. 2004). While the court must conduct "a thorough, probing, in-depth review," the "ultimate standard of review . . . is a "narrow one" and "'[t]he court is not empowered to substitute its judgment for that of the agency.'" *Simms v. Nat'l Highway Traffic Safety Admin.*, 45 F.3d 999, 1003 (6th Cir. 1995) (quoting *Citizens To Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415-16 (1971)).

Defendants' response (docket #31) at pages 19-20.

Defendants maintain that the proper test was set forth by the court in *Chevron, U.S.A., Inc. v. Natural Resources Defenses Council, Inc.*, 467 U.S. 837 (1984). According to Defendants, under *Chevron*, where a statute is unambiguous, the Court, as well as the agency, must give effect to the unambiguous expressed intent of Congress. Where a statute is ambiguous, the question presented to the Court is whether the agency's decision is based on permissible construction of the statute. Defendants maintain:

> The "restoration of lands" component of the NIGC decision is entitled to deference, as it gives effect to the plain language of IGRA, and the "contiguous to a reservation" component of the decision is entitled to deference because it is a permissible construction of an ambiguous statutory provision.

Defendants' response (docket #31) at pages 21-22.

According to Plaintiff, Defendants' decision is not entitled to *Chevron* deference because Defendants' decision on the two issues presented fails to apply the Indian canon of statutory construction, providing that ambiguous statutes are to be construed in favor of Indians. Plaintiff makes a persuasive argument that it is entitled to application of the Indian canon of statutory

construction with respect to the "reservation" component of the NIGC decision in this case. In my opinion, it is not, however, necessary to resolve this legal question in order to resolve the issues presented by Plaintiff's motion for injunctive relief. Applying *Chevron* deference to the reservation component of the NIGC decision, it is my recommendation that the Court find that Plaintiff has established a substantial likelihood on the success on the merits of this claim.

The reservation component of Defendants' decision is found in the February 14, 2006, letter of Edith R. Blackwell to Philip N. Hogen. The letter begins by explaining that the 1983 parcel of land was never proclaimed a reservation. This is not in dispute by either party. The letter then goes on at great length to state that gaming could be permitted on the 2000 parcel only if it is contiguous to reservation land.

Thus, for gaming to be authorized on the 2000 parcel, the 1983 parcel must be considered "reservation" land. As stated above, the 1983 parcel was never declared a reservation. Plaintiff maintains that the 1983 parcel is a de facto reservation. The February 14, 2006, letter explains:

> There is not a single established uniform definition of reservation elsewhere in federal statutes. Although several federal statutes define the term, the definitions vary greatly based upon the intent of the program and are generally not helpful for the present analysis. Some of these definitions define reservation in terms of trust land. Such definitions are not controlling, however, because of the differentiation in the IGRA between trust land and reservation. This differentiation suggests that something more than a mere set aside of land into trust by the Federal government is required for a reservation under the Act and necessitates a definition of reservation that is specific to the needs and requirements of the IGRA.

The letter goes on to explain, quoting the case of *Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001), that land preserved in a treaty for purposes of an Indian cemetery was not a reservation for purposes of the IGRA because it was not for the residence of tribal Indians. The

letter explains, "Although *Sac and Fox* requires residence in order to be a reservation, it does not state the reverse proposition that land used for tribal housing is a reservation. Therefore, we do not conclude that *Sac and Fox* decides the issue presented here." Letter at page 7. The letter explains that, "absent additional evidence that indicates a federal intent that the 1983 parcel was to serve as the Tribe's permanent settlement, it is not reservation within the meaning of the IGRA." *Id.* at 9. In concluding that the parcel was not a de facto reservation, the letter refers to two cases, *United States v. Sandoval*, 231 U.S. 28 (1913), and *United States v. McGowan*, 302 U.S. 535 (1938). These cases equated the question of whether or not there was criminal jurisdiction over land with whether or not that land was reservation land. These cases are not particularly helpful in understanding Defendants' position in this case, as conceded at oral argument by counsel representing Defendants. The letter clearly implies that residence alone is not enough to make a parcel of land a de facto reservation. The letter explains, "We conclude, therefore, that neither residential use by tribal Indians on trust land, nor the exercise of tribal jurisdiction, is the determinative factor in defining reservation under the IGRA." It is difficult, if not impossible, to glean from the letter of February 14, 2006, what factors are utilized in determining whether or not a parcel of land is "reservation" land.

During oral argument, counsel for Defendants conceded that the 1983 parcel in St. Ignace was for all practical purposes identical in use to the reservation land of the Tribe located in Sault Ste. Marie, Michigan. Although the use of the two parcels of land appears to be identical, one is considered a reservation and the other is not. At the same time, a Sugar Island parcel of land, which has very few uses by the Tribe, was considered reservation land by proclamation. During oral argument, the undersigned repeatedly attempted to have counsel for the Defendants identify what factors are utilized in determining whether a parcel of land is reservation land. Counsel was unable to clarify this for the Court. In fact, at the conclusion of oral argument, it appeared to the

undersigned that Defendants' position is that land is reservation land if Defendants conclude it is, and is not reservation land if they conclude otherwise.

As the court explained in *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001):

> This time the Tribe argued before the district court, "without reference to and despite the history of the Reserve," that the Tribe's activities with regard to the tract subsequent to Miami Tribe I established the Tribe's jurisdiction over the tract. [*Miami Tribe of Okla. v. United* States 5 F.Supp.2d 1213, 1218 (D. Kan. 1998)]. The court in Miami Tribe II, however, declined to resolve the Tribe's argument. Rather, the court concluded that the NIGC's decision not to approve the proposed gaming management contract should be set aside as an abuse of discretion because the NIGC failed to provide a "reasoned explanation" why the Tribe, in view of its recent activities, had not established jurisdiction over the tract, and did not now exercise governmental power over the tract. *Id.* at 1218. The court further noted that limitations in the administrative record prevented it from concluding the NIGC's decision was the product of "reasoned decisionmaking." *Id.* at 1219. The court cited as troublesome the NIGC's lack of reference to tribal ordinances and other activities that the Tribe asserted were examples of its exercise of jurisdiction and governmental power over the tract. The district court therefore remanded the matter to the NIGC for further proceedings related to the proposed gaming management contract.
>
> * * *
>
> The NIGC's failure to thoroughly analyze the jurisdictional question in its most recent decision likely renders its conclusion that the tract constitutes "Indian lands" within the meaning of IGRA arbitrary and capricious. *See Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1574-76 (10th Cir. 1994) (discussing arbitrary and capricious standard).

Id. at 1220-1229.

The *Kansas v. United States* case presents different facts and a different legal question from that presented in this case. What is similar is the Defendants' failure to provide a reasoned explanation for its decision.

After thoroughly reviewing the February 14, 2006, letter, I conclude that Defendants have failed to provide a reasoned explanation for its conclusion that the 1983 parcel is not reservation land. As counsel representing Defendants stated at oral argument, "The letter is clearly struggling with this definition of reservation. There is no question about it. The problem is that reservation is not defined in IGRA, so the Department went about trying to interpret what is a reservation by looking at, you know, where cases talk about it." In some respects, it is difficult to determine whether or not the decision of the Defendants, as made in the February 14, 2006, letter, is arbitrary and capricious because the letter is so confusing. As quoted above, the letter states that absent additional evidence that indicates a federal intent that the 1983 parcel was to serve as the Tribe's permanent settlement, it is not a reservation within the meaning of the IGRA. No explanation as to what additional evidence could be considered was provided in the letter. The record reflects that the 1983 parcel was intended to be used in exactly the same manner and for the same purposes as the reservation land in Sault Ste. Marie. No explanation is given as to why the 1983 parcel is not reservation land and the Sault Ste. Marie parcel is reservation land. In their response and at oral argument, Defendants maintain that the 1983 parcel could only be reservation land if Defendants so proclaimed it before 1988. This position is not consistent with Defendants' decision as reflected in the February 14, 2006, letter. The decision indicates that some set of factors could support a finding that the 1983 parcel is a de facto reservation. However, those factors are never identified. The decision of February 14, 2006, is wholly inadequate in explaining the basis for Defendants' conclusion.

Defendants' position that the 1983 parcel could only be considered reservation land if it had been proclaimed such in 1988, is inconsistent with the February 14, 2006, letter and the actions of the Defendants in this case. If, as Defendants' maintain, the only basis the 1983 parcel

could be concluded a reservation was by proclamation in 1988 or before, Defendants would not have taken years to answer Plaintiff's request nor sought additional information on more than one occasion.

Defendants admit that the term "reservation" is an ambiguous one and that the pro-Indian canon requires the IRGA to be construed in favor of Indians. Defendants' response (docket #31) at pages 22-24. Defendants go on to indicate, "The NIGC and the Department as federal agencies [are] charged with overseeing implementation of IGRA on a consistent, uniform, basis across the nation, the pro-Indian canon of statutory construction should not be applied in this case to supplant the traditional deference afforded to agency interpretations of statutes that they are charged with administering." Defendants' response (docket #31) at page 26. Defendants' decision on the reservation component of Plaintiff's claim is far from "consistent and uniform." As Plaintiff points out, what Defendants have done is argue what does not constitute a reservation, without describing what a reservation is and why the 1983 parcel was found not to be a reservation. The February 14, 2006, letter did state, "We do not conclude that a tribe must have proclaimed reservation in order to game or have a reservation reserve from cession." February 14, 2006, letter at page 9. The 1983 parcel provides tribal housing, health services, educational services and social services, and is for all practical purposes identical from a use perspective with the reservation in Sault Ste. Marie, Michigan. This would appear to meet the definition of a reservation found in 18 U.S.C. § 1151(a). *See also Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1050 (10th Cir. 2001).

One final factor the Court should consider in deciding whether or not injunctive relief should be issued is the equities. As one Treatise has explained:

> On an application for a preliminary injunction or a restraining order, the court, in the exercise of its discretionary powers, will balance the equities and consider the relative inconvenience or hardship to the parties resulting from its decision to grant or deny relief.
>
> As a general rule, in determining whether to grant a temporary or preliminary injunction, or a restraining order, it is proper for the court to weigh the equities and balance the relative positions of the parties with respect to benefits, convenience, harm, hardship, injury, and resulting damage. The court will also consider public interest factors.
>
> Once the court, on a motion for a preliminary injunction, is satisfied that the conditions for such relief have been met, it must consider the harm that the non-moving party will suffer if the injunction is granted, balancing it against the irreparable harm to the moving party from the denial of relief. The ultimate goal of any test used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. Therefore, on an application for a preliminary injunction, the court, in the exercise of its discretionary powers, will consider the traditional balance of convenience; this is to say, it will consider whether a greater injury would be done by granting the injunction than would result from a refusal to do so. The court must exercise its discretion in favor of the party most likely to be injured.

43A C.J.S. Injunctions § 82 (2007) (footnotes omitted).

The balancing of equities in the present case clearly supports issuance of the injunctive relief requested. Plaintiff has a $41 Million facility which cannot be used for its intended purpose. Defendants' actions or inactions, in part, are responsible for the current situation. The harm to Plaintiff is significant. There is little, if any, harm to Defendants by permitting gaming to occur a few hundred feet from the spot where gaming is currently occurring. Defendants will not suffer an injury if the injunctive relief is granted. If, upon a full review of the claims presented in this lawsuit, the Court concludes Defendants' position is legally supported, Defendants will be vindicated and will not have suffered an injury. On the other hand, if Plaintiff is not permitted to use its facility, the injury could be devastating.

Accordingly, it is respectfully recommended that the Court conclude that Plaintiff has established a substantial likelihood of success on the merits of the "reservation" component of their claim.[1]

CONCLUSION

It is respectfully recommended that the Court conclude that, balancing the four factors enunciated by the Sixth Circuit in *Jones v. City of Monroe*, 341 F.3d 474 (6th Cir. 2003), Plaintiff is entitled to injunctive relief. It is further recommended that an order should issue permitting the Tribe to operate its new casino on the 2000 parcel pending resolution of this case.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within ten days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR. 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal those issues or claims addressed or resolved as a result of the Report and Recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: July 23, 2007

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[1] Based on this recommendation, it is not necessary to determine whether or not there is a substantial likelihood of success on the merits of the "restored lands" component of Plaintiff's claim. However, the undersigned notes that the July 31, 2006, memorandum from Philip N. Hogen to Penny J. Coleman does not suffer from the inadequacies of the February 14, 2006, letter. The memorandum is well-reasoned and adequately explains the basis for Defendants' decision and is, in my opinion, on sound legal ground. This is not, however, an indication that I have concluded that Plaintiff could not prevail on this claim.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,	)	
Plaintiff,	)	
v.	)	Case No. 2:06-cv-276
	)	HON. R. ALLAN EDGAR
UNITED STATES OF AMERICA, et al.,	)	
Defendants.	)	

ORDER AND PRELIMINARY INJUNCTION

Plaintiff Sault Ste. Marie Tribe of Chippewa Indians moves pursuant to Fed. R. Civ. P. 65(a) and (b) for a preliminary injunction. [Doc. No. 26]. The motion was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation under 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.1. The Magistrate Judge has submitted his report and recommendation. [Doc. No. 40]. Defendants have raised certain objections [Doc. No. 45], and plaintiff has responded in opposition to the objections. [Doc. No. 47].

After reviewing the entire record *de novo*, the Court concludes that the defendants' objections [Doc. No. 45] are **DENIED**. The Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b).

In reviewing the plaintiff's motion for preliminary injunction, the Court has considered and balanced four factors: (1) whether the plaintiff has shown a substantial likelihood or probability of success on the merits; (2) whether the plaintiff has shown irreparable injury; (3) whether a

preliminary injunction would harm third parties; and (4) whether the public interest would be served by a preliminary injunction. *Jones v. City of Monroe, Michigan*, 341 F.3d 474, 476 (6th Cir. 2003); *Nightclubs, Inc. v. City of Paducah, Kentucky*, 202 F.3d 884, 888 (6th Cir. 2000); *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995); *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985). The Court agrees with the report and recommendation that all of these factors weigh in favor of issuing a preliminary injunction.

With regard to the second factor, i.e. whether the plaintiff has shown irreparable injury, the Court notes that defendants recently submitted for the Court's consideration a copy of a letter written by David L. Bernhardt, Deputy Solicitor, Office of the Solicitor, United States Department of the Interior, which is addressed to a member of the House of Representative of the United States Congress, Hon. Bart Stupak. [Exhibit B to Defendant's Response to Plaintiff's Motion to Supplement the Record, Court Doc. No. 49-3]. In the first sentence of the fourth paragraph in the letter, Deputy Solicitor Bernhardt states the following in his capacity as an official representative of the United States Department of the Interior: "We recognize the significant potential economic impact our opinion may have on the Band." The term "Band" as used in this quoted sentence refers to and means the Sault Ste. Marie Tribe of Chippewa Indians, the plaintiff in the instant suit. The phrase "our opinion"in the quoted sentence refers to and means the legal opinion issued by Edith R. Blackwell, Associate Solicitor for the Department of the Interior, Division of Indian Affairs, on February 14, 2006. This statement made by Deputy Solicitor Bernhardt in his letter tends to support the Court's determination here that the plaintiff Indian tribe has met its burden of showing that the plaintiff will suffer substantial economic harm and irreparable injury unless the Court issues a preliminary injunction under Fed. R. Civ. P. 65.

Accordingly, the plaintiff's motion for preliminary injunction [Doc. No. 26] is **GRANTED** pursuant to Fed. R. Civ. P. 65.

The Court hereby issues the following **PRELIMINARY INJUNCTION** pursuant to Fed. R. Civ. P. 65. Plaintiff shall be and is permitted to immediately open and operate the plaintiff's new gambling casino which has been constructed on and straddles the real property known as the "2000 Parcel" and the "1983 Parcel" located in St. Ignace, Michigan, pending the final disposition of this action and pending further order of this District Court. Defendants are enjoined from implementing and enforcing the final administrative decision and order issued by the National Indian Gaming Commission on or about September 1, 2006, under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 - 2721, which would interfere with and prevent the plaintiff's operation of said new gambling casino. Pending the final disposition of this case and pending further order of this District Court, defendants shall not take any further action and steps to impede, prevent, stop, or otherwise interfere with the plaintiff's opening and operating said new gambling casino.

Plaintiff is not required to post a bond or other security under Fed. R. Civ. P. 65(c) because there is no risk that the defendants might suffer any money damages in the event that the preliminary injunction is ultimately determined to have been wrongfully entered.

SO ORDERED.

ENTER this August 28, 2007.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE

The CHAIRMAN. Mr. Chairman, thank you very much for being with us today.

Next we will hear from the Honorable Benjamin Nuvamsa, Chairman of the Hopi Tribe in Arizona. I regret that we do not have a name tag in front of you, but welcome to the Committee, and you may proceed, Mr. Chairman.

STATEMENT OF HON. BENJAMIN H. NUVAMSA, CHAIRMAN, HOPI TRIBE

Mr. NUVAMSA. [Greeting in native tongue.] Good morning, Chairman Dorgan, members of the Senate Committee on Indian Affairs.

The Hopi Indian Tribe appreciates the opportunity to provide testimony on S. 531, the Repeal of the Bennett Freeze. My name is Benjamin Nuvamsa, and I am Chairman of the Hopi Tribe.

Before I begin, I would like to thank Senator McCain for introducing this legislation and for his ongoing leadership on this very important matter. The Hopi Tribe supports the Committee's efforts through S. 531 to end the Bennett Freeze and thereby assist the Hopi and Navajo people in resolving the longstanding dispute between our people over lands of the 1934 Act reservation.

This repeal of the Bennett Freeze will close a long, contentious period in the history of our tribes. We can now move forward into what I hope will be a new era of cooperation between the Hopi and Navajo, which is vital to both tribes. For more than 100 years, the Hopi Tribe has worked to prevent the loss of its lands through the much-larger Navajo Nation and to preserve the rights of the Hopi to control its lands against intrusion.

Beginning in 1958, the United States Congress enacted a series of laws intended to lead to a final resolution of the disputes between the Hopi and Navajo of the 1882 Hopi Reservation. The Navajo-Hopi Land Settlement Act of 1974 authorized litigation between the Hopi and the Navajo to determine the tribes' respective rights in both the 1882 and the 1934 Act Reservation.

Incidentally, I wanted to make a point here that also my grandfather, Peter Nuvamsa, Sr., was our first chairman of the Hopi Tribe and he worked on this issue back in his day.

In November 2006, Secretary of the Interior Dirk Kempthorne approved an intergovernmental compact between the Hopi Tribe and the Navajo Nation, ending more than 40 years of litigation between our tribes over lands within the 1934 Act Navajo Reservation. In December, 2006, the United States District Court for Arizona approved this compact.

The agreement between our tribes accomplishes several important objectives. First, it ends the long, contentious and expensive litigation between the Hopi and Navajo over the lands of our respective reservations. Secondly, it grants to the members of both tribes certain religious access and use rights on the lands of the other.

Thirdly, the agreement secures to the Hopi religious practitioners the right to gather eagles on parts of the Navajo Reservation. And finally, this agreement ends the development moratorium imposed under the Bennett Freeze. All that remains is for Congress to amend the 1974 Act to repeat that section of the Act that codified the freeze.

Passage of S. 531 will symbolize the close of a long and difficult period in the history of our tribes, and will set the stage for a new period of optimism for the Hopi and the Navajo people in the area, one which will allow Hopis and Navajos to pursue economic and resource development initiatives rather than litigation.

In our cooperation, we hope to improve the quality of life enjoyed by our people, while allowing access to and regular use of sacred sites and shrines on our respective lands. We hope that passage of S. 531 will lay the foundation for cooperation not only between the Hopi and the Navajo, but also between the two tribes and the United States; a foundation that will support our joint efforts to de-

velop the lands and resources and the economies of our two tribes into the sustainable homelands that the tribes and the United States intended them to be.

Chairman Dorgan, let me thank you and the members of this Committee for the opportunity on behalf of the Hopi Tribe to testify concerning S. 531. We look forward to working with the Committee to resolve any issues raised by this legislation and moving it closer to passage.

I am happy to answer any questions that you may have. Thank you very much.

[The prepared statement of Mr. Nuvamsa follows:]

PREPARED STATEMENT OF HON. BENJAMIN H. NUVAMSA, CHAIRMAN, HOPI TRIBE

Good morning, Chairman Dorgan, members of the Senate Committee on Indian Affairs.

The Hopi Indian Tribe appreciates the opportunity to provide testimony on S. 531, the Repeal of the Bennett Freeze. My name is Benjamin Nuvamsa, and I am Chairman of the Hopi Tribe.

Before I begin, I would like to thank Senator McCain for introducing this legislation and for his ongoing leadership on this very important matter.

The Hopi Tribe supports the Committee's effort through S. 531 to end the Bennett Freeze and thereby assist the Hopi and Navajo people in resolving the long-standing dispute between our people over the lands of the 1934 Act Reservation. Congress' repeal of the Bennett Freeze will close a long contentious period in the history of our tribes. We can now move forward into what I hope will be a new era of cooperation between the Hopi and Navajo, on issues vital to both tribes. For more than 100 years, the Hopi Tribe has worked to prevent the loss of its lands through the much-larger Navajo Nation and to preserve the rights of Hopi to control its lands against intrusion.

Beginning in 1958, the United States Congress enacted a series of laws intended to lead to a final resolution of the disputes between the Hopi and Navajo of the 1882 Hopi Reservation. The Navajo-Hopi Land Settlement Act of 1974 authorized litigation between the Hopi and the Navajo to determine the tribes' respective rights in both the 1882 and the 1934 Act Reservation.

Incidentally, I wanted to make a point here that also my grandfather, Peter Nuvamsa, Sr., was our first chairman of the Hopi Tribe and he worked on this issue back in his day.

In November 2006, Secretary of Interior Dirk Kempthorne approved an Intergovernmental Compact between the Hopi Tribe and the Navajo Nation, ending more than 40 years of litigation between our tribes over lands within the 1934 Act Navajo Reservation. In December 2006, the United States District Court for Arizona approved the Compact.

This agreement between our tribes accomplishes several important objectives. First, it ends the long, contentious and expensive litigation between the Hopi and Navajo over the lands of our respective reservations. Secondly, it grants to the members of both tribes certain religious access and use rights on the lands of the other. Thirdly, the agreement secures to Hopi religious practitioners the right to gather eagles on parts of the Navajo Reservation. And finally, this agreement ends the development moratorium imposed by the Bennett Freeze. All that remains is for Congress to amend the 1974 Act to repeal that section of the Act that codified the freeze.

Passage of S. 531 will symbolize the close of a long and difficult period in the history of our tribes and will set the stage for a new period of optimism for Hopi and Navajo people in the area, one which allows Hopi and Navajo to pursue economic and resource development initiatives rather than litigation.

In our cooperation, we hope to improve the quality of life enjoyed by our people, while allowing access to and regular use of sacred sites and shrines on our respective lands. We hope that passage of S. 531 will lay a foundation for cooperation not only between the Hopi and Navajo, but also between the two tribes and the United States; a foundation that will support our joint efforts to develop the lands and resources and the economies of our two tribes into the sustainable homelands that the tribes and the United States intended them to be.

Chairman Dorgan, let me thank you and the members of this Committee for the opportunity on behalf of the Hopi Tribe to testify concerning S. 531. We look for-

ward to working with the Committee to resolve any issues raised by this legislation and moving it closer to passage.

I am happy to answer any questions that the members may have. Thank you very much.

The CHAIRMAN. Mr. Chairman, thank you very much.

Finally, we will hear from Mr. Raymond Maxx, who is the Navajo Nation Council Delegate and Chairman of the Navajo-Hopi Land Commission, Navajo Nation Council, in Window Rock, Arizona. Mr. Maxx, you may proceed.

STATEMENT OF RAYMOND MAXX, CHAIRMAN, NAVAJO-HOPI LAND COMMISSION

Mr. MAXX. [Greeting in native tongue.] Thank you, Senator Dorgan, for inviting me to come before this body. Senator Murkowski, Senator Tester, good morning.

My name is Raymond Maxx. I am the Chairman of the Navajo-Hopi Land Commission, which is the Navajo Nation Council entity responsible for overseeing the Bennett Freeze matters. Thank you for this opportunity to speak about S. 531, legislation that would formally strike from the United States code of provisions authorizing the development freeze in the western portion of the Navajo Nation.

On November 3, 2006, the Navajo Nation and the Hopi Tribe and Secretary Kempthorne signed an intergovernmental compact in Phoenix, settling the litigation over the western portion of the Navajo Nation that had been subject to Federal development restriction, commonly referred to as the Bennett Freeze. It was a wonderful day and signaled a new beginning for all parties.

Because my family was relocated twice by the Federal Government and now lives in a former Bennett Freeze area, I have firsthand knowledge of what conditions were like. When we located to the Bennett Freeze area in the late 1970s, I don't think my parents fully understood that they could not fix their home in the Bennett Freeze; that you could not make additions; that no Federal, Tribal or State programs could assist your community through the building of infrastructure essential to the health and well-being of any community. As a result, the Bennett Freeze is locked into the poverty of 1966, when the freeze was imposed.

For the families who live in the former freeze area, so long as the authority for the freeze remains in the U.S. Code, there also remains a fear that it could be reimposed. Passage of S. 531 could send a powerful signal that all parties have begun the process of moving on from the divisive disputes of the past. It could also ensure that there are no ambiguous interpretations which would lead to the re-imposition of the Bennett Freeze development freeze.

In addition to passing S. 531, I would encourage the Committee to hold field hearings on how the Bennett Freeze area can be redeveloped and what level of Federal support should be provided.

Thank you for this opportunity to speak on S. 531. Thank you.

[The prepared statement of Mr. Maxx follows:]

PREPARED STATEMENT OF RAYMOND MAXX, CHAIRMAN, NAVAJO-HOPI LAND COMMISSION

My name is Raymond Maxx. I am the Chairman of the Navajo-Hopi Land Commission, which is the Navajo Nation Council entity responsible for overseeing Bennett Freeze matters.

Thank you for this opportunity to speak about S. 531, legislation that would formally strike from the U.S. code the provisions authorizing a development freeze in the western portion of the Navajo Nation.

On November 3, 2006, the Navajo Nation, the Hopi Tribe and Secretary Kempthorne signed an intergovernmental compact in Phoenix settling the litigation over the western portion of the Navajo Nation that had been subject of a federal development restriction, commonly referred to as the Bennett Freeze. It was a wonderful day and signaled a new beginning for all the parties.

Because my family was relocated twice by the Federal government, and now lives in the former Bennett Freeze area, I have first hand knowledge of what conditions are like. When we relocated to the Bennett Freeze area in the late 1970s, I don't think my parents fully understood that you could not fix your home in the Bennett Freeze; that you could not make additions; that no Federal, Tribal or State programs could assist your community through the building of infrastructure essential to the health and well-being of any community. As a result, the Bennett Freeze was locked into the poverty of 1966, when the freeze was imposed.

For the families who live in the former Bennett Freeze area, so long as the authority for the Freeze remains in the U.S. Code, there also remains a fear that it could be reimposed. Passage of S. 531 would send a powerful signal that all parties have begun the process of moving on from the divisive disputes of the past. It would also ensure that there are no ambiguous interpretations which could lead to the reimposition of the development freeze.

In addition to passing S. 531, I would encourage the Committee to hold a field hearing on how the Bennett Freeze area can be redeveloped and what level of Federal support should be provided.

Thank you for this opportunity to provide testimony on S. 531.

Attachment

A PRIMER TO THE NAVAJO-HOPI-UNITED STATES "LAND DISPUTE"

Called by a Federal court the "greatest title problem in the West,"[1] the 111-year old Navajo-Hopi-United States "land dispute" is much more--it is a human tragedy on a huge scale, and yet another sad example of Federal mistreatment of Native Americans. The "land dispute" has led to the largest forced relocation of any racial group in this country since the internment of Japanese Americans during World War II,[2] with devastating spiritual, psychological and economic consequences for thousands of Navajo families.

A. Origins Of The "Land Dispute." In 1882, at the request of the local Bureau of Indian Affairs agent who was seeking authority to evict two non-Indian missionaries working among the Hopi, President Chester Arthur signed an executive order establishing a reservation "for the use and occupancy of Moqui [Hopi], and such other Indians as the Secretary of the Interior may see fit to settle thereon." At the time the reservation was created there were 300 to 600 Navajos living within its boundaries, and approximately 1800 Hopis.[3] President Arthur's order, by its broad reference to "such other Indians", clearly encompassed the Navajos who made up one-sixth to one-third of the population. Even so, it was evident that little thought had been given to the actual land usage of the two tribes as the boundaries of the new reservation (known as the 1882 Reservation) were artificially designated as a rectangle--one degree of latitude in width and one degree of longitude in height. Inside this artificial reservation there were over 900 Indian sites--the majority of which were Navajo.[4]

Because of continuing pressure by the Hopi Tribe for a determination as to who legally was allowed to occupy the 1882 Reservation, the Congress authorized the two tribes in 1958 to sue each other to resolve the issue (as sovereign nations, both the Navajo Nation and the Hopi Tribe are immune from suit unless Congress dictates otherwise). The Hopis sued within ten days after the law was passed and claimed exclusive ownership of the 1882 Reservation. In 1962, a Federal court held:

> [t]he Hopi and Navajo Indian tribes have joint, undivided, and equal interests as to the surface and sub-surface including all resources appertaining thereto, subject to the trust title of the United States.[5]

In reaching this decision, the Federal court thus ruled that the Navajo Indians living on the 1882 reservation were "such other Indians" as set forth in President Arthur's executive order.

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1. Healing v. Jones (II), 210 F. Supp. 125, 129 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963)(per curiam);

2. Hollis A. Whitson, A Policy Review of the Federal Government's Relocation of Navajo Indians Under P.L. 93-531 and P.L. 96-305, 27 Arizona Law Review 371, 372-373 (1985).

3. Emily Benedek, The Wind Won't Know Me (New York: Knopf, 1992), p. 34; Whitson, op. cit., p. 375, n. 30.

4. Whitson, op. cit., p. 375 n. 30, citing Healing v. Jones (II), 210 F. Supp at 137 n. 8.

5. Healing v. Jones (II), 210 F. Supp at 192.

Dissatisfied with this result, the Hopi Tribe began petitioning the Congress for partition of the land. In 1974, this effort succeeded. However, according to a recent history "[i]t was not repeated Hopi complaints about Navajo encroachment onto uninhabited 1882-area lands that drove the [Federal] government to action. It was the pressure of oil and gas companies to determine ownership of the area."[6] The "disputed lands" lie on top of one of the richest coal beds in the Western United States. A Congress more interested in Watergate revelations than Indian issues adopted "the Hopi solution", and passed Public Law 93-531 which provided for partition of the 1882 reservation (except for an area known as District Six which had previously been determined to be exclusively Hopi). This law called for the appointment of a Federal mediator to seek a negotiated settlement of the dispute. If the two tribes could not come to agreement--and they did not--the mediator was required to establish within 90 days a partition line dividing the "disputed lands" in half, except for District Six which was to remain in Hopi hands. All the Hopi had to do was wait and not agree to anything for 90 days and the arbitrary boundary partition and draconian relocation provisions would come into effect. The Hopi did just that. The partitioning required by Congress did not require any inquiry into nor a determination of who was actually living on what area of land. Congress simply required the mediator and the federal court to partition the land in half without looking at whether the Hopi Tribe's claims bore any relationship to their use of the lands. The result of the arbitrary partitioning is that thousands of Navajo people, many of whom are non-English speaking, traditional and elderly, were shocked and horrified to learn that the land they and their ancestors have lived on for generations was now Hopi land and that they would have to relocate.

Had this legislation only called for partition, then perhaps today there would be no dispute; there is no reason a large number of Navajos could not live on the Hopi Reservation, just as many Indians live on the reservations of other tribes throughout the country. But Public Law 93-531 called for something more, something terrible: **all members of a tribe located on land partitioned to the other tribe would be forced to relocate!** Because the Hopis live in villages, most already within what was recognized as the exclusive Hopi reservation, it was possible to draw a partition line that would place only 100 Hopis on the Navajo side of the line. In stark contrast, the Navajos, who live in small family groupings located out of sight of each other, numbered over 10,000 on what was now Hopi land. Many of those 10,000 were among the most traditional Indians left in the United States, speaking only Navajo, descended from Navajos who had resided in the same location from long before the establishment of the 1882 reservation,[7] and living a traditional subsistence lifestyle.

The requirement that these Navajo families undergo forced relocation is totally without precedent since the World War II internment of Japanese-Americans. Notably, where Indian tribes have successfully sued to recover land from non-Indians, the tribes have only received a cash payment; relocation of the non-Indians was never considered an option.[8]

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6. Benedek, op. cit., p. 134.

7. Report of Richard P. Morris to Judge William P. Clark, September 20, 1985, p. 5. Clark was formerly the Secretary of Interior and was appointed by President Reagan to serve as a mediator between the Navajo and Hopi tribes.

8. Benedek, op. cit., p. 154.

The law, despite its draconian relocation provision, was supposed to be administered in a "generous and humane" manner, with families receiving cash benefits and a new relocation home. In reality, as discussed further below, the relocation and housing program, inhumane in its very conception, has also been bedeviled by bureaucratic ineptitude with great hardships imposed on those families that choose, under great Federal government pressure, to relocate.

B. The Relocation Program

> It is like being buried alive.
> -- 64 year old woman relocatee.[9]

The effort to relocate over 12,000 Navajos off of their ancestral lands has resulted in enormous hardship and heartache for a proud people. Many of the so-called "relocatees" have been traumatized by the attempt to adjust to a cash economy from their subsistence lifestyles. Few have marketable skills, employment history, training, education or any other means to pay such common expenses in a modern economy as taxes and utility bills.[10] A 1979 survey of relocated Navajos revealed that 25% of them were doing poorly, either having lost their homes to loan sharks, or otherwise struggling with severe family instability, health problems, suicide attempts and depression. A 1982 Relocation Commission survey found that at least one-third of the Relocatees no longer owned their relocation homes.[11] A follow-up survey in 1983 found that one-half of Navajos relocated to border towns had either lost their homes or accumulated significant debts due to their unfamiliarity with a cash economy and the unscrupulous actions of lenders.[12] By March, 1984, almost 40% of the relocatees who were put in off-reservation communities no longer owned their relocation homes; evidence of fraud was so great that an FBI investigation was begun.[13]

In 1982, a prominent social scientist predicted that continued relocation of the Navajos would result in (1) the undermining of the relocatees' faith in themselves, (2) the dependency of the relocatees on the Federal relocation agency, (3) the breakup of families due to the increased stress and alienation caused by the relocation, (4) increased depression, violence, illness, and substance abuse, and (5) stress on the other Navajo communities which volunteered to make room for the relocatees.[14] Every expert who testified on the probable effects of the relocation before the law was passed predicted similar dire consequences.[15] Tragically, the intervening years have shown that all of these predictions

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9. Orit Tamir, Relocation of Navajo from Hopi Partitioned Land in Pinon, 50 Human Organization 173, 175 (1991).

10. Whitson, op. cit., p. 387.

11. Ibid., p. 388, citing 134 Cong. Rec. S13336-37 (daily ed. Oct. 1, 1982) (statement of Sen. Dennis DeConcini).

12. Benedek, op. cit., p. 211.

13. Whitson, op. cit., p. 389.

14. Thayer Scudder, No Place To Go, (Philadelphia: Institute for the Study of Human Issues), p. 10.

15. Ibid, pp. 141-142.

have come to pass.[16] There has even been a significant rise in death rates among the relocatees after they relocated.[17]

Relocation for these Navajo families was not just a matter of changing address. It was an end to their way of life. Truly, they felt "buried alive." For those who remain on the land, resisting the relocation program, a Federally-imposed construction freeze, along with a freeze on almost all Federal assistance, has created nothing short of government enforced squalor.[18] Reduction of livestock by the Bureau of Indian Affairs (BIA), authorized to the "carrying capacity" level of the land, has actually cut much deeper and has led to accusations that the BIA was trying to "starve out" the Navajo families.[19]

Even greater hardship has been inflicted upon the Navajo "refugees"--Navajo families who left the Hopi land under Federal pressure and in accordance with the law--who have yet to be provided relocation housing and other Federal benefits. Some of these families have waited as long as 12 years![20] According to Relocation Commission statistics, more than one-third of the refugees awaiting housing are living in substandard conditions that often do not even meet the minimum Federal requirements for temporary housing for migratory farm workers. Some are living under conditions that pose an extreme risk to personal health and safety. Many have had to move in with extended family members on other parts of the Navajo reservation and, as a result, are living in severely overcrowded homes. During the only Congressional oversight hearing ever held on the implementation of the relocation law, the Relocation Commission testified regarding the plight of the Navajo refugees:

> We think, frankly, that it's been a travesty that we have not been able to provide benefits to those relocatees that complied in good faith with the order of the courts and the instruction of Congress to leave the area of controversy.[21]

The tragedy of the relocation policy is all the more poignant because it is not the first time the Navajos have been relocated on a massive scale by the Federal government. In 1863, the United States Government dispatched Kit Carson to subdue the Navajos. Kit Carson used Hopi and other Indian scouts in his campaign against the Navajo. To force the Navajos out of hiding, Carson engaged in a systematic "scorched earth" policy, killing or setting fire to Navajo livestock, orchards, fields and homes. Over 8,500 Navajos were captured and marched 300 miles to their "new home" at Fort Sumner, New Mexico. Hundreds died on the march, and thousands died in captivity at Fort Sumner, where living conditions were abominable. The Navajos who escaped capture hid out in remote portions of their land including the Grand Canyon and the top of the Black Mesa, the current "disputed land"

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16. Benedek, op. cit., pp. 174-175.

17. Scudder, op. cit., pp. 29, 139-140.

18. Whitson, op. cit., p. 405.

19. Ibid., pp. 406-407.

20. Benedek, op. cit., p. 260.

21. Testimony of Relocation Commission before the House Committee on Interior and Insular Affairs, July 19, 1986.

area.[22] Finally, in 1868, the Army realizing that their effort to transplant the Navajos was a failure, let them return to their homeland in Northern Arizona and Northwest New Mexico. Navajos families still pass down tales of horror and courage from that experience--now supplemented by stories of the ongoing relocation.

C. Navajo Origins In The Southwest. Navajo religious belief teaches that the Navajos have always lived in the Southwest, emerging from a lower world to this, "the Fifth world," in the vicinity of the current Navajo Reservation. The Navajo Creation Story, or Story of Emergence as it is also known, is the central narrative of the most sacred Navajo ceremonial--the Blessing Way. The Creation Story begins with the earth as a great land mass surrounded by an ocean with a solid sky overhead--not unlike the Creation Story in the Bible.[23] Above the sky was another world--the second world--and above that another, and so on until this, the fifth world. The Navajo People traveled up through these worlds, transformed from insect people in the first world, into human beings in the fourth world. The Navajos believe that above the fifth world is a sixth world where all things become "one with the cosmos."[24] Several events in the Navajo Creation Story are remarkably similar to the Judeo-Christian story of creation, including an expulsion from the first world paralleling Adam and Eve's expulsion from Eden, and the destruction of the first and fourth worlds by floods, like the biblical story of Noah. Many Navajo religious beliefs and stories are identified with specific sites and topographical features located throughout the current Navajo reservation and in the "disputed land."

Anthropologists have a different view on how both the Navajo and Hopi came to be in present day Arizona, believing that ancestors of both tribes, as well as all the other indigenous peoples of North and South America, crossed a land bridge from Asia over what is currently the Bering Sea, then migrated southward to populate a virgin continent.

The exact arrival of the Navajos in the Southwest is uncertain. A number of anthropologists consider that the Navajos' Athapaskan line of ancestors could have arrived by 800 A.D., perhaps earlier.[25] Dating by dendrochronology (tree-ring dating) indicates that Athapaskan tribes constructed homesites in Western Colorado by 1000 A.D., and in Gallup, New Mexico in approximately 1380 A.D. Athapaskan pottery has been found in Governador Canyon, New Mexico, dating to 710-875 A.D.[26]

The written accounts of early European settlers, as early as 400 years ago, identify the Navajo as occupying an area that includes the current "disputed lands" (presumably, the Navajos occupied the area for sometime before the Europeans arrived). In 1583, a probable group of Navajos was identified living "from as far west as the Hopi pueblos . . . to Mount Taylor [one of the four mountains sacred to the Navajos]." The famous Spanish priest, Fray

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22. Clyde Kluckhohn and Dorothea Leighton, The Navajo (Cambridge: Harvard Press, 1974), pp. 40-41.

23. Raymond F. Locke, The Book of the Navajo, (Los Angeles: Mankind Publishing Co. (5th. Ed.) (1992), p. 55.

24. Ibid., p. 56.

25. See Locke, op. cit., pp. 8-9; Benedek, op. cit., p. 59; Kluckhohn and Leighton, op. cit., p. 33; Whitson, op. cit., p. 374 n. 23.

26. Locke, op. cit., p. 8.

Alonso de Benevides, Custodian of Missions of New Mexico, wrote in 1630 "that the province of Navajo Apaches has a north and south border of some fifty leagues [approximately 150 miles] but it extends westward for more than three hundred [approximately 900 miles], and we do not know where it ends." Benevides later wrote that the land occupied by the Navajo "becomes greater as we go towards the center of their land, which extends so far in all directions that, as I say, it alone is bigger than all others."

That the Navajos occupied an area ranging from the Four Corners region, across the current disputed land, to the Colorado River, was further confirmed by Colonel Doniphan who wrote in 1847 "that the country inhabited by Navajo Indians lies west of [the] range of mountains bounding the valley of Del Norte on the east, and extending down the tributaries of the Rio Colorado of the west, near the Pacific Ocean." Navajo sites have been identified in Keams Canyon, on the current Hopi Reservation, dating from as early as 1644 to 1711.[27] In 1846, John T. Hughes wrote that "the Navajos occupy a district of country scarcely less in extent than the State of Missouri. They range from 33 [just below modern day Phoenix] to the 38 [lower Utah and Colorado] of north latitude. They stretch from the borders of New Mexico on the east to the settlements of California on the west." When Kit Carson captured and "relocated" over 8,500 Navajos in 1863, those that escaped lived in the Grand Canyon and on Black Mesa, the very area the Hopis have claimed as exclusively theirs in the "land dispute."[28]

Ironically, both the Hopi and the Navajo are what is termed "modern ethnic groups." This means that they are formed from various other ethnic groups or communities. Having lived in the same area with many other tribes for as long as 1200 years, this is not surprising. In the case of the Hopis, there is evidence that they formed between the late 1200s and the 1400s from the Chemehuevis of southern California-southwestern Arizona, the Paiutes of the Grand Canyon's north rim (and Utah and Nevada), and other tribal groups located in southern Arizona and even Mexico. During this same period, and in succeeding centuries, there were also significant influxes of, and intermarriage with, Pueblo Indians from New Mexico.[29]

The Navajos also represent a group of mixed heritage. Based on language studies and other evidence, the Navajos are frequently linked with the Athapaskan peoples of the Northwest and Alaska. However, frequent intermarriage with other peoples in the Southwest has given them a varied heritage and culture. By the end of the 17th century, one-quarter of the Navajo population may have been Pueblo Indians.[30] The Navajos welcomed other people, intermarrying heavily, absorbing and adapting their cultures to the Navajo way of life. Many Hopis have joined the Navajos, and several Navajo clans trace their lineage to Hopi families.[31] As a result, many Navajo can trace some of their heritage to the Pueblo people.

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27. Stokes and Smiley, Tree Ring Dates from Navajo Land Claims, 1964.

28. Kluckhohn and Leighton, op. cit., pp. 40-41.

29. Based on research by Klara Kelley, Ph.D., Peggy F. Scott and Harris Francis for the Navajo-Hopi Land Commission, citing Harry Courlander, The Fourth World of the Hopi, (New York: Thomas Crown, 1971) and E. Charles Adams, The Pueblo Katsina Cult, (Tucson: University of Arizona Press, 1991).

30. Benedek, op. cit., p. 63 (citing Karl Luckert, The Navajo Hunter Tradition (Tucson: University of Arizona Press, 1975), p. 14.

31. Kluckhohn and Leighton, op. cit., p. 37.

While the lineage of the various tribal groups in the Southwest quickly becomes very complex, the patterns of settlement remain basically the same. The Hopi traditionally lived and occupied villages near water, farming intensively adjacent land, later adding grazing. The Hopi would travel farther afield to visit religious shrines, to gather herbs, plants, and other items. Not until the late 19th century did a few Hopi occupy land away from their villages as they began commercial livestock grazing. At the same time, other peoples, notably the Navajo, with a mixed focus on hunting, gathering and farming, occupied more scattered dwellings as they subsisted in loosely defined areas outside the Hopi villages.

Despite overwhelming evidence that the Navajos have lived in the Black Mesa area in the center of the "disputed lands" for at least 400 years, and likely far longer, the Hopi government and its public relations firms like to speak of Navajo encroachment on Hopi land -- even if the Hopis never lived on the land, instead using it occasionally for religious purposes and otherwise sharing it with such groups as the Navajo. The Hopi government points to the popular wisdom--and Hollywood image--of the Navajos as "wild raiders", claiming they have suffered "depredations" at the hands of their Navajo neighbors. The Hopis do not point to their own history of raiding, such as the massacre and destruction of the Hopi village of Awatovi by other Hopi villages.[32] Indeed, as one anthropologist noted, citing the Hopi example, "[t]he stereotype of the Pueblo Indians as nonaggressive and essentially peaceful lacks validity."[33]

On one point the Hopi are right: there was a period of time when Navajos engaged in raiding in New Mexico and Arizona. What is little understood, however, is that this raiding was in response to abuses at the hands of the Mexicans, the Americans and even other tribes. In 1853, the first commander of Fort Defiance, on what is now the Navajo Reservation, referring to relations between Navajos and Whites, wrote:

> The brutal murder of Chapitone, a Navajo Chief who signed a treaty with the U.S. in 1849 at Canyon De Chelly, by Mexicans near Cebolleta added to other offenses committed against the Navajos . . . As a nation of Indians, the Navajo do not observe the character given them by the people of New Mexico. From the period of the earliest history, the Mexicans have injured and oppressed them to the extent of their power, and because these Indians have redressed their own wrong, the degenerate Mexicans have represented them as a nation of thieves and assassins . . . They are usually armed with bows and arrows, and a lance. A few of the rich only have guns . . . There are no fixed traders among them, the few sent to their country in 1851 and 1852 were lawless, itinerants with roving licenses . . . Nothing gives an Indian a worse opinion of white men than the tricks and impositions practiced upon them by unprincipled traders. Half the Indian

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32. Benedek, op. cit., pp. 54-56.

33. Ibid., p. 56, quoting Marc Simmons, "History of Pueblo-Spanish Relations to 1821," Handbook of North American Indians, vol. 9 (Washington, D.C.: Smithsonian Institution, 1979), p. 189.

> wars of our country have sprung from such causes . . . The Navajos have not always been the aggressors, but have so signally redressed the wrongs inflicted upon them, that their name has become a terror.[34]

Indeed, by 1860, only three years before Kit Carson was sent to subdue the "Navajo threat", between 5,000 and 6,000 Navajos were held as slaves by New Mexicans.[35] The unfair Navajo reputation as "wild raiders," used so skillfully by the Hopi government, has its origin in justifiable actions taken by Navajos to protect their lands, women and children.

The Navajos are not just "visitors" in the Southwest, as the Hopi government claims when arguing that the "encroaching" Navajos should be forced to relocate. Navajos have a long history in this part of the country, and are closely tied to the other indigenous peoples of the region, both in belief and in blood. Their claim to the land is just as strong, and often stronger, than the claim of the Hopi.

In the end, the evidence of conflict between the Navajo and Hopi Nations does not support the Navajos as constant aggressors at the Hopi expense. Rather, it "supports only the conclusion that there were conflicts over scarce resources like water in the [disputed lands]."[36]

D. Navajo And Hopi Land Use And Cooperation. As the previous section illustrates, the Navajo people have lived in the current "disputed lands" for many centuries, if not over a millennium. During the same period, the Hopi lived in villages, outside the "disputed lands", near water sources, where they engaged primarily in farming. While the two peoples lived in separate, though adjacent localities, the Navajo people always allowed the Hopi people to come on to their land to gather eagle feathers and conduct other religious activities. This tradition of cooperation, far stronger than any history of conflict over scarce resources, is the tradition the current Navajo residents of the disputed land wish to continue.

E. The Myth of Navajo Nomadism. The Hopi government likes to talk of the "encroachment" of Navajo "nomads." As the previous discussion should demonstrate, the Navajos have a long history in the northern Arizona area, and it is unjust to claim that they encroached upon the Hopis. Indeed, the assertion that the Navajos are nomads has been dismissed by every major anthropologist who has studied Navajo history.[37] Because the Navajos have a grazing tradition, they commonly engaged in the seasonal movement of animals. Such movement took place within a prescribed area and could not be defined as nomadic.[38] Navajo origin stories emphasize farming, hunting and gathering activities, with a lesser emphasis on livestock. The Navajos are considered, in historic times, to be

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34. See The Navajo Times, February 21, 1991, p. 16.

35. Benedek, op. cit., p. 65.

36. Whitson, op. cit., p. 383.

37. Kluckhohn and Leighton, op. cit., p. 38; Benedek, op. cit., p. 64; Peter Iverson, The Navajo Nation (Albuquerque: University of New Mexico Press, 1981), pp. 5-6.

38. Iverson, op. cit., p. 6.

"primarily sedentary agriculturalists."[39] As Fray Benavides noted in the 17th century, the Navajos were "great farmers."

F. The Great Navajo Spiritual Bond To The Land

> The White Man does not understand that the Indian is bounded to their land and cannot be treated as parcels to be distributed like the U.S. mail.
>
> -- Askie Betsie[40]

Unless you have lived among the Navajo people, walked their countryside herding sheep or gathering medicinal herbs, spoken to their elders, or participated in the ceremonial burial of an umbilical cord on the traditional homesite, it is very difficult to understand the deeply spiritual and intimate bond Navajos feel for their land. This great bond makes it impossible for traditional Navajos to leave their lands for any length of time; and makes it hard for them to survive the trauma of the Federal relocation program.

For the Navajo, land and religion are synonymous.[41] In Navajo belief "man has been advancing toward oneness with the universe . . . [and thus] he identifies himself with all its parts."[42] As even previous Federal mediators have recognized, Navajos view the land as "mothergod" and believe they are charged with caring for her.[43] The Navajos define the boundaries of their land with four sacred mountains which appear on the Tribal seal: the San Francisco peaks in Arizona, Mount Taylor in New Mexico, and Mount Hesperus and Blanca Peak in Colorado. "Within their boundaries ceremonies have the greatest power; herbs and minerals taken from their slopes are used in the strongest medicines; they themselves are the repositories of never-failing, never-ending life and happiness."[44]

Navajo religious practices focus upon the land and the livestock that the Navajo believe they were given to tend by their gods. Sheep provide life's sustenance, as well as food and wool for weaving. With the rugs and blankets woven by Navajo women, traditional families obtain cash or goods. Among traditional Navajos, sickness is often attributed to being "mutton hungry."

The loss of ancestral land and livestock destroys the foundation of traditional Navajo life. The relocation program, because it takes away both of these, has come to be identified with sickness and death.

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39. Ibid., p. 5; Kluckhohn and Leighton, op. cit., p. 35; see also Benedek, op. cit., p. 60.

40. Whitson, op. cit., p. 387 (citing Navajo-Hopi Land Dispute Commission, Endangered Dine: The Big Mountain Peoples and Other Land Dispute Navajos, p. 15 (1980).

41. Scudder, op. cit., p. 142.

42. Gladys Reichard, Navaho Religion (New York: Princeton University Press, 2d ed., 1970), p. 14.

43. Report of Morris to Clark, pp. 9-10.

44. Welcome To The Land Of The Navajo, prepared by the Museum and Research Department of the Navajo Tribe, 4th ed., 1974, p. 49.

> My husband passed away early Spring 1986. He and I tried everything and anything to help alleviate this illness but we lost him. He tried hospitals, even traditional ceremonies, but he said he was too affected by the land dispute, land partition, livestock reduction, and relocation. He said nothing could bring him back to the health, peace and harmony he once had, not to mention the self-sufficiency that this family once enjoyed. He said the relocation cost him his life.
>
> -- Relocatee

The deeply spiritual relationship that Navajos have for the land is difficult to describe.

> In our Judeo-Christian culture, we have sacred sites. People make pilgrimages to places considered to be holy. But, in the Navajo case, the entire land, within the four sacred mountains, as they have defined it in their tradition and their mythology, is holy land. So, if you were to take a traditional use area and plot out all of the places that are used for religious purposes, rituals, prayers, offerings, thanksgivings, etc., you'd end up with a map that is just literally impossible to see the places because there would be so many of them. There is a place here for collecting plants, there is a place here where one's umbilical is buried, there is a place here where jewels are offered, water here. That is an important concept in Navajo religion. It is quite different, I think, from our own understanding of the land that we live upon which we can, of course, alienate by sale and we can easily move if we want to. Not that we don't have feeling for our land, but they don't usually involve this matter of daily ritual or weekly or yearly ritual, and so on.
>
> -- Professor John Wood
> Northern Arizona University[45]

[45] Testimony of Professor John Wood, Northern Arizona University, before the Navajo and Hopi Indian Relocation Commission.

The CHAIRMAN. Mr. Maxx, thank you very much.

Finally, we will ask Mr. Gidner to comment on the other three pieces of legislation that have been testified to in this panel. Mr. Gidner?

Mr. GIDNER. Thank you, Mr. Chairman. This is the happier part of my testimony, because the Department supports all three of these bills.

I will say, if I may preface my comments regarding H.R. 2120, on the Sault Ste. Marie, I am myself a proud member of the Sault Ste. Marie Tribe. I am recused from this decision, but I will state the Department's position on the record. We support the bill with one clarifying amendment which is in the written testimony. If I could beg your forbearance, if you have any questions on this bill, if you could submit them in writing, because I am recused from the matter and really should not be answering questions about it in this forum.

The CHAIRMAN. Is that 2120?

Mr. GIDNER. Yes, 2120. I am a member of the Sault Ste. Marie Tribe.

The CHAIRMAN. Thank you.

Mr. GIDNER. Regarding H.R. 2963, on the land into trust for Pechanga, we support that bill. We do have some comments on it. The bill requires the Bureau of Land Management to complete a new survey within 180 days of enactment. We recommended that be changed to say as soon as practicable. The BLM does have a process and surveys in the queue. We would prefer this one join the queue rather than jump to the front, in fairness to the other survey work that needs to be done.

There are also improvements on the land, and we would suggest that any improvements be transferred to the Tribe in fee and that the Department of Interior is not responsible for any improvements that may be transferred along with the lands.

Finally, a minor matter, but the bill references the MOU between the Tribe and the U.S. Fish and Wildlife Service. Bureau of Land Management was also signatory to that MOU and we would recommended that the bill be amended to reflect that.

Finally, S. 531, repealing the Bennett Freeze, we wholeheartedly support that. The Tribes, Hopi and Navajo, should be commended for the hard work and negotiations that have gone into that. They put aside decades of dispute, came up with a solution and everything that needs to happen has happened except for the repeal of this section. So we wholeheartedly support that.

That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Gidner follows:]

PREPARED STATEMENT OF JERRY GIDNER, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning, Chairman Dorgan, Vice Chairwoman Murkowski, and Members of the Committee. I am pleased to be here today to provide the Department of the Interior's (Department) position on H.R. 2120, a bill to direct the Secretary of the Interior to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe; S. 2494, the "Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act"; H.R. 2963, the "Pechanga Band of Luiseño Mission Indians Land Transfer Act of 2007"; S. 1080, the "Crow Tribe Land Restoration Act"; and S. 531, a bill to repeal section 10(f) of Public Law 93–531, commonly known as the 'Bennett Freeze'.

H.R. 2120

We support the purpose of H.R. 2120, a bill to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe. Currently, the matter is before the court as *Sault Ste. Marie Tribe v. United States,* Civ. No. 2:06–CV–276, and if Congress passes the legislation, it would put an end to the litigation.

The Sault Ste. Marie Tribe (Tribe) is located in the far northern section of Michigan and has two reservations. The Tribe also has property the Department holds in trust for them that is not considered reservation land for purposes of the Indian Gaming Regulatory Act (IGRA). One such parcel is the subject of H.R. 2120, on which there is Indian housing, some other tribal facilities, a now-closed casino, and a casino housed in a temporary structure that has since been moved to another location. In 1988, the Tribe approached the Department to have the land proclaimed a reservation, along with five other parcels, but its paperwork was not completed prior to the enactment of IGRA.

The Tribe seeks to game on adjoining property taken in trust in the year 2000. It built a new casino on this parcel. The Tribe was advised by the Department and the National Indian Gaming Commission that they would need to apply under IGRA for a two-part determination in order to game on the parcel. If Congress deems the first parcel to be reservation as of April 1988 for purposes of IGRA, then the tribe can game in its new casino under an exception in IGRA.

We suggest amending the legislative language to reflect that "the property shall be deemed a reservation as of April 19, 1988, for purposes of the Indian Gaming Regulatory Act." We will be happy to work with the Committee staff on amending the legislation to reflect the necessary changes.

S. 2494

The Department opposes S. 2494, the "Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act". The Administration has worked with the Spokane Tribe over the last several years on this issue. We believe negotiations to correct several serious issues should continue.

S. 2494 would provide compensation to the Spokane Tribe for the use of its land for the generation of hydropower by the Grand Coulee Dam. Specifically, S. 2494 would require the Secretary of the Interior, subject to the availability of appropriations, to deposit $99.5 million over five years, $23,900,000 for Fiscal Year 2008 and $18,900,000 for the following four fiscal years, into a trust fund held in the U.S. Treasury and maintained and invested by the Secretary of the Interior for the Spokane Tribe to be known as the "Spokane Tribe of Indians Settlement Fund". S. 2494 would also transfer certain land and administrative jurisdiction from the Bureau of Reclamation (BOR) to Bureau of Indian Affairs (BIA) for the Spokane Tribe. The land transferred would be held in trust for the Spokane Tribe and would become part of the reservation.

The Spokane Tribe has not brought forward a legal claim that would warrant this type of settlement. The Administration questions whether the Tribe has or could bring any legal claim that would entitle it to compensation as contemplated under the bill. In light of the lack of any pending legal claim, the Administration does not believe this legislation is currently justified as a settlement of claims.

The Department is also concerned with transferring land and jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs for the Tribe absent a prior written agreement to fully address Reclamation's and National Park Service's future ability to manage Grand Coulee Dam, Lake Roosevelt, and the Columbia Basin Project. Such a written agreement should clearly address a number of issues associated with transferring land into trust status, such as future liability for damages from shoreline erosion and heavy metal contamination in sediments from upstream mining, as well as issues related to land and recreation management, including consideration of the existing five-party Lake Roosevelt Cooperative Management Agreement. While under the present draft Reclamation would be granted a perpetual easement to operate the Columbia Basin Project, it is imperative that the parties specifically reach agreement on the details of the lands and easement rights involved and how the transferred areas will be managed prior to the passage of this legislation. At a minimum, such an agreement should be required prior to the actual transfer taking place.

H.R. 2963

This legislation directs the Secretary of the Interior to transfer three parcels of public land totaling approximately 1,178 acres in Riverside County, California, currently managed by the Bureau of Land Management (BLM), into trust status for the benefit of the Pechanga Band of Luiseño Mission Indians (Tribe).

The Department supports the bill, and recommends certain technical and clarifying amendments pertaining to an accurate legal description, surveys, valid existing rights, and improvements. We look forward to working with the Committee to resolve these concerns.

The BLM has worked with the Tribe over the past several years concerning their interest in acquiring land to add to their reservation. These lands are covered by BLM's 1994 South Coast Resource Management Plan (RMP), which does not identify the parcels for disposal. The Department understands that the Tribe has enacted a resolution committing the Tribe to conserving the parcels' cultural and wildlife values. In addition, in 2005, the Tribe entered into a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service and the BLM, which states that the Tribe will manage the lands for conservation purposes, which this bill reflects. Recognizing the Tribe's interest in obtaining the land for cultural and conservation purposes, the BLM would be supportive of amending its land use plan to enable the transfer to proceed. The transfer process could take several years to complete, and the Tribe has sought this legislation to obtain the parcels more quickly through the legislative process.

The first parcel is nearly 20 acres and contains significant cultural properties, including burials, of high importance to the Tribe. It is an isolated public land parcel characterized by rolling coastal sage scrub and surrounded by private, generally residential, lands. In response to potential threats to the cultural resources of the parcel, the BLM instituted a Public Land Order (No. 7343) in 1998 that withdrew the entire parcel from surface entry, mining, mineral leasing, and mineral material sales. There are no other encumbrances, including mining claims, which are known to exist on the lands. A Memorandum of Understanding between BLM and the Tribe was initiated in 2001, which outlines cooperative management of the parcel, including preservation of its cultural resource values. The Tribe owns and maintains an adjacent parcel of land containing another portion of the Pechanga Historical Site.

The second, and much larger parcel, is slightly more than 958 acres and is adjacent to the Tribe's reservation. These lands are included in the Western Riverside County Multi-Species Habitat Conservation Plan and the Fish and Wildlife Service (FWS) has found them to be significant for their connectivity with rivers and as wildlife corridor. The Tribe and others were consulted on the Plan, and these wildlife values are encompassed in the Tribal resolution referenced above. This rugged parcel is characterized by a dense mix of oak woodlands, chaparral and coastal sage scrub, and slopes throughout the parcel are steep and eroded. The parcel also includes a service road right-of-way, as well as a 10-inch waterline and water tank that was granted for 30 years to the Rainbow Municipal Water District in 1983. No other encumbrances, including mining claims, are known to exist within this parcel. To resolve a trespass issue, 12.82 acres will be sold to San Diego Gas & Electric for fair market value in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

The third parcel is 200 acres, which is included in the Multi-Species Habitat Conservation Plans of Western Riverside County. The resources in this parcel are similar to those in the second parcel.

The Department does have some concerns with the bill. The bill requires the BLM to complete a new survey within 180 days of enactment. We recommend that the lands to be transferred be surveyed "as soon as practicable," rather than within 180 days, as currently required by the bill. Additionally, we recommend language be added to the bill that specifies that any improvements, appurtenances, and personal property will be transferred to the Tribe in fee at no cost and the Department of the Interior is not responsible for any improvements, appurtenances, and personal property that may be transferred along with the lands. The Department feels this change is necessary since the federal government does not have a fiduciary obligation to repair and maintain any acquired improvements. Finally, the bill references the MOU between the Tribe and the U.S. Fish and Wildlife Service. The BLM was also a signatory of the MOU and we recommend the measure reflect that.

The Department has had a very cooperative working relationship with the Tribe on the proposed land transfer and supports the bill's enactment with these modifications.

S. 1080

S. 1080 would require the Secretary to develop a program to acquire interests in land from eligible individuals within the Crow Reservation in the State of Montana and to hold those acquired interests in trust for the Crow Tribe (Tribe). The Department is very supportive of the goals to reunify the Tribe's reservation land and en-

courage the Tribe to manage its own assets; however, the bill raises considerable concerns as drafted. Therefore, the Department cannot support the bill at this time.

We are concerned with the bill regarding its definitions, timing, size, and mechanisms. We look forward to working with the Committee to address our concerns with the bill and on ways to create a viable program.

S. 531

We support S. 531, a bill to repeal section 10(f) of Public Law 93–531, commonly known as the "Bennett Freeze."

On November 3, 2006, Secretary Kempthorne, Navajo Nation President Joe Shirley Jr. and Hopi Vice Chairman Todd Honyaoma signed an historic Navajo-Hopi Intergovernmental Compact, resolving a 40-year-old dispute over tribal land in northeastern Arizona.

The compact put an end to the ban on construction in the disputed area that was imposed by U.S. Commissioner of Indian Affairs Robert Bennett in 1966. Commonly known as the "Bennett Freeze," this ban has greatly affected the use of this land and has been a severe hindrance to the people who live there.

The agreement also provides that the United States Fish and Wildlife Service will study eagle populations in the disputed area and regulate the use of eagles depending on the size of the population. The Hopi Tribe and the Navajo Nation, which were in litigation since 1958 concerning ownership of nearly 10 million acres on their reservations in northeast Arizona, also have agreed to dismiss litigation, to release each other from claims, and to share funds collected for the use of parts of the disputed property that are held by the Department of the Interior.

While the agreement put an end to the ban on construction in the disputed area, the agreement did require the approval of the judge adjudicating the litigation between the Hopi Tribe and the Navajo Nation. The final requirement is to repeal that section of Public Law 93–531 (25 U.S.C. 640(d)–9(f)), from current law in order to fully lift the "Bennett Freeze."

Mr. Chairman, this concludes my statement and I will be happy to answer any questions you may have.

The CHAIRMAN. Mr. Gidner, thank you very much. We appreciate your being here.

Let me go back to the point you made with respect to the Crow Reservation. Tell me how long there have been discussions between Interior and the Crow Nation with respect to fractionation.

Mr. GIDNER. I am not sure exactly. It has been at least two or three years, I believe.

The CHAIRMAN. Tell me again the objection of the Interior Department to this legislation.

Mr. GIDNER. In more detail, it is not an objection to the purpose, it is not an objection overall to the mechanism. I guess it is objections to the details. A small matter is the timing. The bill prohibits loans under this program after a certain date in 2012. We believe that needs to be updated. It is now already 2008. We don't think the program could be completed in that amount of time. Again, that is a minor timing issue.

There are some concerns regarding the size of the loans, the loan program that is available. It may be better to break it into phases, so that the liability for the Government is not potentially so large. At one time, I think it was around $380 million that was discussed in the bill.

We also have questions about some of the definitions, for example, reasonable purchase price. It is unclear how that translates into the need for an appraisal and exactly how that would work. If appraisals would be required to be provided by the Department of Interior, that could be problematic due to our funding constraints and backlog of appraisal needs.

The CHAIRMAN. H.R. 2120, do you support that generally?

Mr. GIDNER. Yes, the Department supports that, with one clarifying change which is set forth in the written testimony.

The CHAIRMAN. Chairman Macarro, you said that you had been working with the BLM for 15 years to place the lands that you have described into trust for the Tribe. What, in your opinion, has taken so long to have these lands put into trust? Why has it taken that long?

Mr. MACARRO. It was actually 1990 when they initiated, at least in Southern California, involving this parcel, the first scoping hearing for lands potentially to be put on disposal. I think the pace of these things as they move characteristically through the BLM, with regard to transfers of land, tracts of land, my understanding is that the parcel is not slated for disposal officially. At previous times it has been and it hasn't been. So it has gone on and off the list. Just working through the administrative process, with different directors, area directors for the BLM, out of Palm Springs and a decade and a half of dealings, it is the pace of slow change.

The CHAIRMAN. We are familiar with the word slow.

[Laughter.]

Mr. MACARRO. Maybe deliberate.

The CHAIRMAN. We hear it a lot in testimony before this Committee.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Gidner, I wanted to ask you, because you have indicated that you support, the Administration supports all three of the bills that we have in front of us. With regard to S. 531, I think you used the words "wholeheartedly support." But does the Department intend to devote any resources towards assisting the families or otherwise helping to develop this Bennett Freeze area? What is the intention within the agency?

Mr. GIDNER. I don't believe we have any budgeted resources for that at this time, Senator.

Senator MURKOWSKI. Is that something you would consider?

Mr. GIDNER. We would certainly consider that for the budget process, yes.

Senator MURKOWSKI. Chairman Payment, in your comments, Mr. Gidner has indicated that he can't give further commentary to this because he is conflicted. I appreciate that. If I understood all that you said, at some point during the time when you had made two previous requests for clarification of this legal status of the land, at one point in time they said that the approval was pending and that at a later point in time there was an admission, if you will, of administrative oversight. Is that, in your opinion, what has caused this delay? It has been just simply that, an administrative oversight, and it is not because of particular issues that may have been resolved that you think with this, we might be able to clear it up?

Mr. PAYMENT. Yes. It is kind of puzzling, because I am a student of political science, and I have looked through this very carefully. We pulled together all of our resolutions and did the research through documents the BIA had. Everything happened, the testimony happened, the local hearings happened with the community to see what the effects would be on the community. And the only

thing that was left to happen was the reservation proclamation being published in the Federal Register.

I think it is because of that we have been able to show that and work closely with the BIA that they acknowledge that. They don't really know why it didn't happen. So the only shortcoming is they don't believe they have the authority to do it this many years later. They encouraged us to actually write a bill.

We also have legislation and we are prevailing in that legislation, but it seems an unnecessarily adversarial role to be suing the Department of Interior on this situation when it can be resolved through legislation. We have litigation, I meant.

Senator MURKOWSKI. Right. Good.

And this is a question to both Chairman Nuvamsa and to Delegate Maxx. Should we be successful with the legislation in lifting this freeze, what do you hope or what kinds of development are you looking to for the Hopi and the Navajo Tribes, if we are successful with this?

Mr. NUVAMSA. Thank you, Senator Murkowski.

The area is isolated. One of the first things we need to do is develop the infrastructure. The people living out there, roads are in terrible shape. The utilities and so on.

Senator MURKOWSKI. There are roads in the area, though?

Mr. NUVAMSA. Leading up to there. As people begin to occupy this area, we are going to need to have infrastructure development. Because again, this area is isolated. I think that would be the beginnings of it, that we have some plans on the future use of it, but because of the freeze and so on, we have been unable to do so at this point. But I see people beginning to occupy and be able to, again, enjoy the same quality of life that everybody enjoys by development, the infrastructure, utilities and so on.

Senator MURKOWSKI. Mr. Maxx, did you want to add anything to that?

Mr. MAXX. Thank you, Senator. Along with infrastructure, the basic need of housing, we are really lacking housing. For a long time, you couldn't even repair a home unless you had permission. And the process took at least five years to get a door or a roof fixed.

Senator MURKOWSKI. Even to make repairs to existing infrastructure, you couldn't fix your roof under this freeze?

Mr. MAXX. That was prohibited under the freeze. So basic homes, roads, infrastructure and Navajo Nation is like 30 years or 20 years behind mainstream society. The Bennett Freeze area is like 30 or 40 years behind Navajo. So that would show you what kind of situation the former Bennett Freeze area is in, after 40 years of Bennett Freeze, it really needs a lot of homes and infrastructure and improvements to catch up with the mainstream.

Senator MURKOWSKI. Thank you. I appreciate the responses and I appreciate the testimony of all of you this morning.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman.

I have one question for Chairman Payment. Just a clarification about the 65 acres that is under trust, correct? Does it physically border your current reservation? I thought I heard you say that, but I just wanted to make sure that is the case.

Mr. PAYMENT. Yes, it does. We actually had an option on both parcels when we first looked at buying it. But we became recognized in 1972, we didn't have gaming until 1985, we didn't have resources to buy all of the land. So we optioned both parcels, but we purchased one piece. It is contiguous, and you can see the not in my backyard, we are not in anybody's backyard. We are about three or four miles outside of the city proper.

We have their support, but we don't abut anybody else's property. It is contiguous to our existing trust land.

Senator TESTER. Okay, thank you.

Mr. Gidner, you had mentioned three things that you had concerns about, the 2012 time line, the size of the land I think who determines reasonable purchase price, if I heard you correctly. Are there any other concerns?

Mr. GIDNER. There have been questions raised about whether a direct loan program is appropriate as opposed to some sort of guaranteed loan program, which we already have. So I would just add that.

Senator TESTER. What you already have in the form of what?

Mr. GIDNER. We have a guaranteed loan program already.

Senator TESTER. For this purpose?

Mr. GIDNER. Well, not specifically for this purpose, for economic development generally.

Senator TESTER. Okay. The 2012 time line, what kind of time line does the Department think it should be at?

Mr. GIDNER. Originally, I believe we had five years. If the amount of money was the same, it is possible for it to be done in five years, that would be after the enactment of the bill.

Senator TESTER. I think that could be easily fixed. How about the reasonable purchase price? Would you have a problem if that was done, if the Tribe were to contract that out through their administrative costs?

Mr. GIDNER. I don't think so. We have a problem because we have a large backlog of appraisals or we have an appraisal process that takes a period of time and we have a certain number of people to do it.

Senator TESTER. So if the Tribe were to get a neutral party and have them do the appraisal, the Department of Interior would accept that appraisal?

Mr. GIDNER. I think we probably would, Senator.

Senator TESTER. Okay, good.

The size of the loan, and 380 million bucks is a lot of dough, no mistake about it. Are you familiar with Cobell?

Mr. GIDNER. Yes, sir.

Senator TESTER. Do you agree with the Chairman's statement that 10 percent of the fractionated land is on Crow?

Mr. GIDNER. I have no reason to doubt that. I know they have a large percentage of fractionated land.

Senator TESTER. Well, I will just tell you my perspective. And you can take this back to whoever you want, but I will just tell you my perspective. My perspective is that you have a chairman and you have a tribe that wants to fix this problem. I think they have put a very common-sense, fair proposal out that is cost-effective.

You can run the numbers on Cobell and you can run the numbers on this. Cobell hasn't happened and this hasn't happened either.

I think if I was the head of your agency, I would be grabbing that guy sitting right there right around the shoulders and hugging him and saying, you know what, we are going to get this done. I really would. Three hundred eighty million is a lot of money, but you are talking 1.7 million acres and you can solve a major problem and set an example and get this fractionated land, get us on the road to solving this fractionated land problem. I think it is the right thing to do, and if I were you guys, I would be aggressively pursuing this as an option. I would be telling us that we need to have this happen, we need to pass this bill, because this is the right thing to do and now.

I am telling you, I do not see the problems that you put out as being—I understand them. I agree with them for the most part and I think they could be easily, very easily remedied. But the size and the fact that it is a loan program and the fact that we are going to solve these problems with this, I just think that it is the right thing to do.

The last thing I would ask you is this. When you head back to the Department, if there are further objections to 1080, I would like to have your response in writing on those, and to what extent, and your suggestions for solving those. I think Senator Baucus and myself would love to have those, as sponsors and co-sponsors of the bill.

Thank you.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

I think Senator Tester touched on many of the things I was interested in, in terms of the five-year time line and the difficulties with an appraisal. But you mentioned something about Government liability. I am an orthopedic surgeon, I know a lot about liability. Could you kind of go into a little bit what you are talking about in terms of the Government's liability here?

Mr. GIDNER. Certainly. As I understand the mechanism of the bill, the Treasury Department would loan money to the Secretary of Interior, who would loan it to the Tribe or a corporate entity set up by the Tribe. The Tribe would pay that money back, the Secretary would pay the money back to Treasury.

If the Tribe did not pay the money back to the Secretary of Interior, the Secretary of Interior still must pay back the Secretary of Treasury. I am not at all suggesting the Crow Tribe would not pay back, but if that did occur, the Secretary of Interior would have a liability to the Treasury Department for monies that we would not have at that point.

Senator BARRASSO. So just because it goes through another department is the issue? Because it is the same thing with any loan that needs to be paid somewhere.

Mr. GIDNER. Basically, yes.

Senator BARRASSO. Thank you.

No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Macarro, I want to ask a question about the allegations dealing with the Endangered Habitats League. I don't

know all the facts surrounding it. What is your response to allegations on that subject?

Mr. MACARRO. Could you be a little bit more specific about the allegations?

The CHAIRMAN. My understanding is there have been questions raised about endangered habitat. Is that correct?

Mr. MACARRO. I think that allegation refers to a previous transaction, not this one. I am not going to try to make their case for them. But we constructed a golf course on some previously acquired land that went into trust, it was through administrative process. I think they have concerns that despite the representations we are going to make here with regard to this piece of land, what is to stop us from doing that again.

All I can say is that they are two different transactions altogether. We are taking some unusual measures with this proposed transaction, this proposed bill today, restricting us in agreement with the Fish and Wildlife Service to transfer the lands. We are stipulating that they will only be used for protection, preservation and maintenance of the archeological, cultural and wildlife resources thereon, that is actually quoting from the bill language.

The CHAIRMAN. I was referring to the Endangered Habitats League of Southern California, that had raised questions. But your response is that the bill itself has drafted responses to those questions?

Mr. MACARRO. It does. It should allay those concerns. They have never worked with tribes, per se, and I think they have issues with self-determination powers that tribes have when they chose to do things that they don't think are in the public interest.

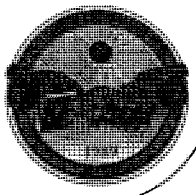
The CHAIRMAN. I understand.

Let me thank all of you for being here to testify. Mr. Gidner, thank you for coming down. We will be considering these pieces of legislation that we have heard today at some future business meeting, we hope soon. I thank all of you for taking the time to come before the Committee.

We will keep the hearing record open for 14 days following today's hearing, so that additional submission of statements will be accepted by our Committee. This hearing is adjourned.

[Whereupon, at 10:50 a.m., the Committee was adjourned.]

A P P E N D I X



City of Temecula

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May 14, 2008

The Honorable Darrell Issa
211 Cannon House Office Building
Congressman, 49th District
Washington, DC 20515

RE: HR 2963, The Pechanga Band of Luiseno Mission Indians Land Transfer Act

Dear Congressman Issa:

The City of Temecula has historically been supportive of land transfers from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseno Mission Indians for the protection of their cultural resources and to maintain open space. It is of paramount importance to the City that these areas be preserved only as open space with absolutely no development that would promote, in any way, resort operations.

In 2004, the City was supportive of HR 4908 (Issa) but did request that if in the future the Band's plans for the area changed, the Tribe consult with the City to ensure that all local issues are appropriately addressed. As a result, we are more concerned now because these open space areas now contain the Pechanga tribe's golf course. These land uses were "switched out" irrespective of the representations made in the federal environmental documentation. Although the NEPA approval called for "no impacts," the tribe apparently changed its mind, and there was no recourse. The City of Temecula was never consulted about this change nor were discussions held with us to address mitigating the impacts of this development.

The City of Temecula is deeply concerned about transferring additional land to the Tribe without the ability to enforce the provisions of the MOU with the Fish and Wildlife Service. As currently written, the MOU can simply be broken. Thus, it is the final section that is crucial:

> (h) Restricted Use of Transferred Lands-
>
> (1) IN GENERAL- The lands transferred under subsection (a) may be used only for the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon.

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(2) NO ROADS- There shall be no roads other than for maintenance purposes constructed on the lands transferred under subsection (a).

However, we are very concerned over the enforcement of these provisions and public access to these areas. If they are violated, how will they be enforced? Further, what opportunities will the public have to enjoy this pristine, natural area? We recommend the following enforcement and access actions be added to the legislation:

1. A reversion clause, wherein the land reverts to federal ownership if the conditions on its use are violated.
2. Designation of the Department of the Interior (DOI) as the entity that monitors the use of the land and enforces the reversion if the facts warrant.
3. Access rights to DOI for monitoring purposes.
4. In the event of federal government inaction, a citizen suit provision that gives citizens the right to sue DOI to enforce the reversion clause after 60 days notice to the Tribe and to DOI.
5. Public access is maintained in exactly the manner it is today with no change to that access.

We believe that strong and accountable enforcement provisions are necessary. The reversion clause and citizen suit components are essential to ensuring that this environmentally sensitive land will remain protected. The City of Temecula cannot support this transfer without the above provisions included as part of HR 2963.

Sincerely,

Shawn Nelson
City Manager

cc: City Council
David Turch & Associates
Pechanga Tribal Council

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

May 12, 2008

Committee on Indian Affairs
ATTN: Allison Binney,
Majority Staff Director and Chief Counsel
United States Senate
838 Hart Office Building
Washington, DC 20510

RE: H.R. 2963, the Pechanga Band of Luiseno Mission Indians Land Transfer Act

Dear Chairman Dorgan and Committee Members:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on H.R. 2963. As Southern California's only regional conservation group, our primary concern is maintaining any transferred land in its pristine condition in perpetuity. This would also allow it to fulfill its important planned role in the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The MSHCP provides permits under the Endangered Species Act for infrastructure and development, and protects the natural heritage of the region.

As you may know, in the case of a previously transferred parcel that now contains the Pechanga tribe's golf course, land uses were "switched out" irrespective of the representations made in federal environmental documentation. Although the NEPA approval called for "no impacts," the tribe apparently changed its mind, and there was no recourse. In the case of the transfer contemplated in H.R. 2963, the MOU with the Fish and Wildlife Service can simply be broken. Thus, it is the final section that is crucial:

> *(h) Restricted Use of Transferred Lands-*
> *(1) IN GENERAL- The lands transferred under subsection (a) may be used only for the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon.*
> *(2) NO ROADS- There shall be no roads other than for maintenance purposes constructed on the lands transferred under subsection (a).*

However, we are deeply concerned over the enforcement of these provisions. If violated, how will it be enforced? We recommend the following enforcement scheme:

1. A *reversion clause*, wherein the land reverts to federal ownership if the conditions on its use are violated.
2. Designation of the Dept. of the Interior (DOI) as the entity that monitors the use of the land and enforces the reversion if the facts warrant.
3. Access rights to DOI for monitoring purposes.

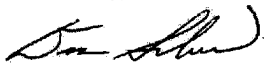
8424-A SANTA MONICA BLVD., #592, LOS ANGELES, CA 90069-4267 ♦ WWW.EHLEAGUE.ORG ♦ PHONE 213.804.2750 ♦ FAX 323.654.1931

4. In the event of federal government inaction, a *citizen suit provision* that gives citizens the right to sue DOI to enforce the reversion clause after 60 days notice to the tribe and to DOI.

As this bill could set a precedent for subsequent legislative transfers of environmental sensitive land, it is important to incorporate strong and accountable enforcement provisions. The reversion clause and citizen suit components are essential.

Please be in contact at any time if additional information would be helpful.

Sincerely,



Dan Silver
Executive Director

cc: Senator Dianne Feinstein

May 15, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

Re: Testimony in Opposition to HR 2963 (Issa)

Dear Chairman Dorgan and Committee Members:

Please accept this letter as my testimony in opposition to HR 2963 (Issa) which would transfer land in Riverside and San Diego Counties to the Pechanga Band of Luiseno Indians. I respectfully request that this letter be submitted and accepted into the official record of hearing on HR 2963.

Chairman Dorgan and honorable Committee members, I testify and urge the Senate Committee on Indian Affairs to vote down HR 2963.

I oppose HR 2963 for several reasons. First of all, I oppose HR 2963 based on the Pechanga Band's actions to deprive and deny individuals of their basic human and civil rights.

The actions taken by Pechanga Tribal Officials -denial of due process, failure to provide equal protection of the laws, establishment of ex post facto laws, etc. - mirror those which led to the introduction and passage of the Indian Civil Rights Act of 1968 ("ICRA") which was intended to ***"... protect individual Indians from arbitrary and unjust actions of tribal governments"*** and to secure for the individual American Indian the broad constitutional rights afforded all other American citizens.

While the ICRA clearly spells out actions which tribal governments are prohibited from participating in, Pechanga tribal officials have failed to comply with the ICRA and have routinely invoked "sovereign immunity" to escape prosecution for their actions. Although the tribal officials claim immunity from suit, this does not equate to innocence of action, and no entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust.

The transfer of the land at issue to the Pechanga Band despite Pechanga tribal officials' repeated acts to deny Indian individuals of basic human and civil rights would send a message that this Committee and this Congress care not that the intended beneficiaries of public land violate federal law.

In addition, the lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials. The cultural and archaeological resources located on the lands

intended for transfer are resources that are associated and culturally affiliated with all the Luiseno bands of Indians, of which there are currently 6 federally recognized bands.

Each of the federally recognized Luiseno bands, as well as the unrecognized group and hundreds of other unaffiliated Luiseno Indians, have an equal right to the resources located within the lands to be transferred and they should also have equal access to the resources. As such, all of the affected Luiseno groups should have been consulted with regarding this transfer. To date, I do not believe any consultation has occurred with the other affected groups.

I am concerned that transferring the land, and the resources therein, to one (1) band at the exclusion of the other six (6) bands and additional groups, would violate the rights of those excluded. Specifically, unless HR 2963 expressly provides access, use, and co-management of the resources located within the lands intended for transfer, the transfer could be in violation of federal laws such as the American Indian Religious Freedom Act and the United States Constitution itself.

If a transfer occurs that fails to include access, ownership, and use rights for all affected Luiseno bands and Indians, the Pechanga Band may deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sites seeking to be protected by HR 2963.

Therefore, if the real intent of HR 2963 is *"the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon"*, the land should be transferred and held in trust for all Luiseno Indians- including the six (6) other recognized bands and other unassociated Luiseno Indians- that are culturally affiliated to the land and resources.

Finally, I oppose HR 2963 and ask this Committee to vote "No" based on the Pechanga Band's actions associated with previous land transfers which were intended to protect and preserve Luiseno cultural and archaeological resources.

I would ask that this Committee take a long hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from development.

In my capacity as Legal Analyst for the Office of the Tribal Attorney for the Pechanga Band, I spent the better part of two (2) years coming to Washington, D.C. and asking Congress to protect the Great Oak Ranch from a power line project that was proposed to go through the Ranch and that would impact the cultural and archaeological resources located on the Ranch property.

The Tribal Attorney, Chairman Macarro, and I made our rounds to Congressional members, federal agencies, and the Administration in our attempts to protect the Ranch and its invaluable resources from development. We made it perfectly clear to all those we met with that the intent and purpose of transferring the Great Oak Ranch property to trust status was to protect and preserve the cultural and archaeological resources located on the Ranch

In fact, Pechanga Chairman Macarro testified to the United States House of Representatives Committee on Resources on April 17, 2002 that:

> "The sole purpose of the (land)acquisition is the preservation and protection
> of the Luiseno people's natural and cultural resources."

And, when specifically asked if the Pechanga Tribe had "any plans for development of any kind on the Great Oak Ranch property", Chairman Macarro's response was as follows:

> "No, we don't. As stated in our application (to transfer to trust) to (the Department of the) Interior/BIA, we stated or have designated there is no change in use in the property, and the intended use and purpose is to preserve and protect the resources that are there."

Chairman Macarro was then asked if the Pechanga tribe planned to use the Great Oak Ranch for gaming purposes or any other purposes other than what you have just outlined. His response was, "No, the tribe does not".

Fast forward to today, the Ranch has been turned into a staging area for on-going construction projects both on the Ranch and associated with the casino complex. A golf course and other amenities associated with the Pechanga Resort and Casino have been built on the Ranch. Needless to say, the character of the Ranch has been drastically changed and in no way reflects the "no change in use" testified to and used by Pechanga tribal officials in lobbying Congress, your Committee, and federal agencies for its protection and transfer to trust. While the transfer of the Ranch property protected it from the proposed power line project, the transfer did not protect the Ranch or its resources from Pechanga tribal projects.

Now, either Chairman Macarro misled Congress and the Department of the Interior about the real reason for the request to transfer the Great Oak Ranch into trust or Pechanga tribal officials forgot that the reason for transferring the Ranch property into trust was to protect its resources from development.

I believe recent remarks made by John Macarro, Chairman Macarro's brother and Pechanga's General Counsel, regarding the Great Oak Ranch and the tribe's decision to build on the property despite testimony to the contrary,

provides a clear picture: "Once the land is placed in trust, a tribe has complete zoning and planning authority over it and can change land uses..."

Considering Pechanga tribal officials' propensity to mislead and/or failure to comply with previous assertions to protect and preserve resources and not build on lands targeted for acquisition, can you really trust them in this instance?

Moreover, should the other Luiseno Bands and Indians expect Pechanga to protect and preserve the resources located on the BLM land intended for transfer when their previous actions are proof otherwise?

The only hope all Luiseno Bands and people have is that HR 2963 is voted down or amended to allow for access, use, and co-management of the land by all those culturally affiliated with the resources located therein.

In conclusion, I respectfully ask this Committee to vote "No" on HR 2963 and/or require the author to amend so that all affected parties have their interests protected. I believe that a "No' vote or amendments to HR 2963 are in order if the true intent and purpose of HR 2963 is "the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon".

Respectfully submitted,

John A. Gomez, Jr.
41801 Corte Valentine
Temecula, CA 92592
(951)941-4943

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 15, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
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would violate the rights of those excluded. Specifically, unless HR 2963 expressly provides access, use, and co-management of the resources located within the lands intended for transfer, the transfer could be in violation of federal laws such as the American Indian Religious Freedom Act and the United States Constitution itself.

If a transfer occurs that fails to include access, ownership, and use rights for all affected Luiseno bands and Indians, the Pechanga Band may deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sites seeking to be protected by HR 2963.

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Respectfully submitted,

Guero Nunez
1301 Michigan av
Beaumeont CA 92223
(951) 845-9898

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

Township of St. Ignace
N4298 Gorman Road
Mailing Address 2373 Shore Drive
St. Ignace, Michigan 49781
Office Phone 906-643-8935
TDD 711

Dale Nelson, Supervisor 906-643-8307 | Donna Harju, Clerk 906-643-8935 | Sheryl Schairer, Treasurer 906-643-9145 | Steven Campbell, Trustee 906-643-7536 | Donald Schairer, Trustee 906-643-9145

April 12, 2007

Sault Ste. Marie Tribe
Chippewa Indians
Aaron A. Payment,MPA
523 Ashmun Street
Sault Ste. Marie, Michigan 49783

Dear Mr. Payment:-

At the Regular meeting of the St. Ignace Township Board April 12, 2007, the board passed the following resolution:-

In as much as the Sault Tribe has been operating the casino since 1986 on the original 1983 parcel in St. Ignace Township without determent to the surrounding area contributing to the general welfare of the community in the agreement of the 2% monies plus monies contributed to public safety and water and sewer projects.

Therefore be it resolved :- that it is the consensus of the Township Board that the Sault Tribe be allowed to receive a statutory exception to utilize the newly constructed casino and motel on the "2000" trust parcel.

Dale E. Nelson,Supervisor
Dale E. Nelson Supervisor
Donna B. Harju, Clerk
Donna B. Harju
Sheryl Schairer, Treasurer
Sheryl Schairer
Donald B. Schairer, Trustee
Donald B. Schairer
Steven Campbell,Trustee
(Absent)

St. Ignace Township is an Equal Opportunity Provider and Employer. Complaints of discrimination should be sent to: USDA, Director of Civil Rights, Washington D.C. 20250-9410.

Vincent Yazzie
10080 Palomino Road
Flagstaff, AZ 86004
(928) 526-4847
Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Dear Honorable Dorgan and Honorable Murkowski,
To understand the Bennett Freeze one must start with greed and using higher education to move the Navajo "Hollywood HillBillies" off their black gold or in this case coal.
US Government officials with cooperating Navajo and Hopi leaders conspired to take the mineral rights from the rightful owners of the coal. As the Hill Billies, had no access to education, rooted for grubs, squirrels, drank muddy water for their existence, US government selected Navajo and Hopi Leaders to take away the coal rights for decades. The Navajo Hill Billies never knew about their black gold.
The Navajo Hill billies were classified as "other indians" who were unknown on the Unofficial allotment of 1917 according to the Healing v. Jones case. They were allowed to stay, but no one knew who they were. Later the Navajo Hill Billies found out who they were, but they were tricked by there Navajo leaders so Navajo Tribe could get their coal royalty with the Hopi Tribe as an accessory. The Bennett Freeze was meant to starve and force the Navajo Hill Billies from using their land.
Due to an error in the Relocation Contract and Quitclaim deed the Navajo Hill Billies can return to their lands, but demand all proceeds from the Black Mesa Mine as their 5th admendment rights have been violated. People have died.
The Bennett Freeze was extended to the 1934 Reservation.
While the negotiations were going on, uneducated Navajos opposed the agreement, but Navajo leaders did not listen to their demands. At Coal Mine Chapter, I heard(second hand story) Louis Denetsosie, Navajo Nation Attorney General ask who are the members of this chapter. People raised their hand, and Louis quickly interjected that they had approved the Compact. This is an outrage. This compact will fall apart later and this whole dispute will land back in court again.
There are other horror stories about Navajo leaders ignoring their constituents in the Bennett Freeze area. The Navajo Hill Billies managed to procreate a Jethro who knows physics, former Nuclear Propulsion Trainee, and a late lawyer father who died from bad heart leads and kidney dyes. The Navajo Hill Billies will use all means to protect their interest and will never succomb to US Corporate interest and US Puppet Navajo and Hopi governments. I don't have to do anything. I will invest my money in China, and I can hire 100 chinese to put 10,000 americans out of work.
Get educated and help your people, but instead one finds out ones own people left them to die in a foreign land for a measly dollar. There is no chance my own people will share that dollar with me. yes, there are some bad people in the Navajo and Hopi governments that need to be removed.
I pick trash in my community and hope the World will change especially Navajo. Travel from Flagstaff to Tuba City, Az or Leupp, AZ and your see a road ROW filled with broken beer bottles whereas my community is clean.
I have sank some Navajo projects just using my knowledge. The Navajo Nation wanted to suck the C-Aqufier dry from underneath some other relatives. I prepared an EIS comment for them. In the middle of a desert, ask the most stupid question, "Any migratory fish?" My relative says yes there is. The Little Colorad River Spine Dace. URS Corporation missed this in the preparation of the EIS and also claimed there were no sinkholes in the area. There were endangered fish and sinkholes. The project was conveniently cancelled claiming there were no buyers. Off-reservation near the planned project land was sellingn like hot cakes. Land was being flipped. Unfortunately, the people at the end of the buying spree ended up with no project and highly overpriced land.
The Navajos and Hopis used their higher education to dupe the Navajo Hillbillies. What goes around comes around.
I suggest you go visit the 1934 area and talk to people who do not know english.
I just can't wait for this legislation to sink Senator John McCain. His only weakness is his anger which could be his Stalingrad.
Sincerely,
Vincent H. Yazzie

Sempra Energy®

George P. Williams
Director
Federal Government Affairs

1399 New York Avenue, N.W.
Suite 350
Washington, D.C. 20005-4733

Tel: 202.662.1701
Fax: 202.293.2887
Fax: 202.293.2888
gwilliams@sempra.com

May 14, 2008

The Honorable Byron Dorgan, Chairman
Senate Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D. C. 20510

Attention: Allison Binney

RE: HR 2963

Dear Chairman Dorgan:

Sempra Energy writes this letter to offer our support for HR 2963. That bill provides for the transfer of certain land in Riverside County California, to be held in trust by the United States for the Pechanga Band of Luiseno Mission Indians. Additionally, it specifically excludes from that transfer approximately 12.82 acres which may be needed by San Diego Gas & Electric Company (SDG&E) for an existing electric transmission line and electric transmission corridor. In order to preserve that critical transmission corridor, should the survey indicate that the land to be transferred includes any of the existing corridor, HR 2963 directs the Secretary of the Interior to convey to SDG&E the needed land at fair market value, with SDG&E also bearing responsibility for survey, appraisal, and other conveyance costs.

This bill is the result of careful and successful negotiations between the Pechanga Band, the Department of Interior and Bureau of Land Management, and San Diego Gas & Electric Company, and addresses the interests of all parties. As the parent company of SDG&E, and a leader in developing energy infrastructure in the country, Sempra Energy supports the solution HR 2963 creates that meets the Pechanga Band's needs while ensuring that the existing transmission structures and the surrounding transmission corridor is preserved.

We commend the efforts of the Pechanga Band and the Department of Interior and Bureau of Land Management in working with SDG&E to achieve these results, and we appreciate Congressman Issa's efforts in bringing forward HR 2963 to complete this process. We urge a vote in favor of HR 2963.

Sincerely,

George Williams

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

Re: Opposition to HR 2963 (Issa) to Transfer Land to the Pechanga Band

Dear Chairman Dorgan and Committee Members:

I submit this letter in opposition to HR 2963 (Issa) which would transfer land in Riverside and San Diego Counties to the Pechanga Band of Luiseno Indians, and I urge the Senate Committee on Indian Affairs to vote down HR 2963.

I oppose HR 2963 for several reasons. First of all, I oppose HR 2963 based on the Pechanga Band's actions to deprive and deny individuals of their basic human and civil rights.

The actions taken by Pechanga Tribal Officials -denial of due process, failure to provide equal protection of the laws, establishment of ex post facto laws, etc. - mirror those which led to the introduction and passage of the Indian Civil Rights Act of 1968 ("ICRA") which was intended to; *protect individual Indians from arbitrary and unjust actions of tribal governments,* and to secure for the individual American Indian the broad constitutional rights afforded all other American citizens.

While the ICRA clearly spells out actions which tribal governments are prohibited from participating in, Pechanga tribal officials have failed to comply with the ICRA and have routinely invoked sovereign immunity to escape prosecution for their actions. Although the tribal officials claim immunity from suit, this does not equate to innocence of action. No entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust.

In addition, HR 2963 does not benefit all the Indians who are associated with or have ties to the cultural and sacred sites located on and within the land proposed to be transferred. The lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials.

Therefore, the land should be transferred to all Indians with ties to the cultural and sacred sites. If a transfer occurs that fails to include ownership and use rights for all affected Indians, the Pechanga Band will deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sacred sites seeking to be protected by HR 2963.

Additionally, I would ask you to take a hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from development. In fact, Pechanga Chairman Macarro testified to the United States House of Representatives Committee on Resources on April 17, 2002: The sole purpose of the acquisition is the preservation and protection of the Luiseno people's natural and cultural resources.

And, when specifically asked if the Pechanga Tribe had any plans for development of any kind on the Great Oak Ranch property, Chairman Macarro's response was as follows:

"No, we don't. As stated in our application to (Department of the) Interior/BIA, we stated or have designated there is no change in use in the property, and the intended use and purpose is to preserve and protect the resources that are there."

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Fast forward to today, the Ranch has been turned into a staging area for on-going construction projects both on the Ranch and associated with the casino complex. A golf course and other amenities associated with the Pechanga Resort and Casino have been built on the Ranch. Needless to say, the character of the Ranch has been drastically changed and in no way reflects the no change in use testified to and used by Pechanga tribal officials in lobbying Congress, your Committee, and federal agencies for its protection and transfer to trust.

Equally as disturbing are recent remarks made by John Macarro, Chairman Macarro's brother and Pechanga's General Counsel regarding the Great Oak Ranch and the tribe's decision to build on the property despite testimony to the contrary: Once the land is placed in trust, a tribe has complete zoning and planning authority over it and can change land uses!

Considering Pechanga tribal officials, propensity to mislead and/or failure to comply with previous assertions to protect and preserve resources and not build on lands targeted for acquisition, can we really trust them in this instance??

Based on the Pechanga Band's actions, especially those associated with the Great Oak Ranch trust acquisition, I oppose HR 2963.

Respectfully submitted,

Trace Eubanks
3631 Roblar Avenue
Santa Ynez, CA. 93406
805-688-4069

May 20, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA Facsimile

Re: Testimony in Opposition to HR 2963 (Issa)

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I am concerned that transferring the land, and the resources therein, to one (1) band at the exclusion of the other six (6) bands and additional groups, would violate the rights of those excluded. Specifically, unless HR 2963 expressly provides access, use, and co-management of the resources located within the lands intended for transfer, the transfer could be in violation of federal laws such as the American Indian Religious Freedom Act and the United States Constitution itself.

If a transfer occurs that fails to include access, ownership, and use rights for all affected Luiseno bands and Indians, the Pechanga Band may deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sites seeking to be protected by HR 2963.

Therefore, if the real intent of HR 2963 is *"the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon"*, the land should be transferred and held in trust for all Luiseno Indians- including the six (6) other recognized bands and other unassociated Luiseno Indians- that are culturally affiliated to the land and resources.

Finally, I oppose HR 2963 and ask this Committee to vote "No" based on the Pechanga Band's actions associated with previous land transfers which were intended to protect and preserve Luiseno cultural and archaeological resources.

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Respectfully submitted,

George Allen
7220 Calvert St.
Annandale, VA 22003

Link Shadley
2437 East 10th Street
The Dalles, OR 97058

May 20, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
VIA Facsimile (202) 228-2589

Dear Chairman Dorgan and Committee Members:

I respectfully and sincerely request that you oppose HR 2963, the Pechanga Band of Luiseno Mission Indians Land Transfer Act of 2007. I am descended from a Northern California Tribe, the Madesi Band of Pit River Indians, and have witnessed firsthand the destruction of culture and concern for all Tribal Members brought about by casino greed.

Mr. Macarro promises cultural preservation and gives this as the reason for the land transfer. Culture also resides in the people, and Mr. Macarro and the current council have wantonly abandoned all respect for many Tribal members and made wholesale disenrollments to increase income to his family and the few remaining members.

Please do not be complicit in these illegal and immoral actions.

Sincerely,

Link Shadley

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The transfer of the land at issue to the Pechanga Band despite Pechanga tribal officials' repeated acts to deny Indian individuals of basic human and civil rights would send a message that this Committee and this Congress care not that the intended beneficiaries of public land violate federal law.

In addition, the lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials. The cultural and archaeological resources located on the lands intended for transfer are

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Respectfully submitted,

Karen Bailey
7059 Catlett Rd
Bealeton, VA 22712

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Washington, D.C. 20510
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I would ask that this Committee take a long hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from development.

In my capacity as Legal Analyst for the Office of the Tribal Attorney for the Pechanga Band, I spent the better part of two (2) years coming to Washington, D.C. and asking Congress to protect the Great Oak Ranch from a power line project that was proposed to go through the Ranch and that would impact the cultural and archaeological resources located on the Ranch property.

The Tribal Attorney, Chairman Macarro, and I made our rounds to Congressional members, federal agencies, and the Administration in our attempts to protect the Ranch and its invaluable resources from development. We made it perfectly clear to all those we met with that the intent and purpose of transferring the Great Oak Ranch property to

trust status was to protect and preserve the cultural and archaeological resources located on the Ranch

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Now, either Chairman Macarro misled Congress and the Department of the Interior about the real reason for the request to transfer the Great Oak Ranch into trust or Pechanga tribal officials forgot that the reason for transferring the Ranch property into trust was to protect its resources from development.

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Sharon Allen Rasheed
9112 Northedge Drive
Springfield, VA 22153
(703) 455-1030

cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 15, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington , D.C. 20510
Fax: (202) 228-2589

VIA Facsimile

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Rick Cuevas Upland, CA 91786 909 920-6785

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Louise Jeffredo Moss Beach, CA

May 15, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
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Fax: (202) 228-2589

VIA Facsimile

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Indians- including the six (6) other recognized bands and other unassociated Luiseno Indians- that are culturally affiliated to the land and resources.

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Greg Hernandez La Puente, CA

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Dennise Diaz **Upland CA 909 997-0938**

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In addition, the lands identified for transfer are lands associated **with all Luiseno people**, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials. The cultural and archaeological resources located on the lands intended for transfer are resources that are associated and culturally affiliated with all the Luiseno bands of Indians, of which there are currently 6 federally recognized bands. Each of the federally recognized Luiseno bands, as well as the unrecognized group and hundreds of other unaffiliated Luiseno Indians, have an equal right to the resources located within the lands to be transferred and they should also have equal access to the resources. **As such, all of the affected Luiseno groups should have been consulted with regarding this transfer.** To date, I do not believe any consultation has occurred with the other affected groups.

I am concerned that transferring the land, and the resources therein, to one (1) band at the exclusion of the other six (6) bands and additional groups, would violate the rights of those excluded. Specifically, unless HR 2963 expressly provides access, use, and co-management of the resources located within the lands intended for transfer, the transfer could be in violation of federal laws such as the American Indian Religious Freedom Act and the United States Constitution itself.

If a transfer occurs that fails to include access, ownership, and use rights for all affected Luiseno bands and Indians, the Pechanga Band may deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sites seeking to be protected by HR 2963.

Therefore, if the real intent of HR 2963 is *"the protection, preservation, and maintenance of the archaeological, cultural, and wildlife resources thereon"*, the land should be transferred and held in trust for all Luiseno

Indians- including the six (6) other recognized bands and other unassociated Luiseno Indians- that are culturally affiliated to the land and resources.

Finally, I oppose HR 2963 and ask this Committee to vote "No" based on the Pechanga Band's actions associated with previous land transfers which were intended to protect and preserve Luiseno cultural and archaeological resources. I would ask that this Committee take a long hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from development.

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"The sole purpose of the (land)acquisition is the preservation and protection of the Luiseno people's natural and cultural resources."

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Respectfully submitted,

Michael Cuevas **Upland CA 909 997-0948**

May 15, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington , D.C. 20510
Fax: (202) 228-2589

VIA Facsimile

Re: Testimony in Opposition to HR 2963 (Issa)

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Richard A. Cuevas **Denver CO 909 319-7080**

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VIA Facsimile

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Edward Orozco **Lochbuie CO**

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Name: SUSAN LACERTE Susan Lacerte
Address: 114 LOS ALTOS DR PASADENA, CA. 91105
Phone Number: 626 792-7454

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Address: 575 O Farrell St. San Francisco, CA. 94102
Phone Number: 415. 826-6851

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Respectfully submitted,

Jennifer Gomez

Jennifer Gomez
41801 Corte Valentine
Temecula, CA 92592
951/694-6264

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

VIA US Mail and Facsimile

Fax: (202) 228-2589

Re: Opposition to HR 2963 (Issa) to Transfer Land to the Pechanga Band

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Rosemarie Guzman
20308 Avenue 13
Madera, Ca 93637
(559) 903-4201

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
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Respectfully submitted,

Name: Robert Edwards, Chairman, Indians of Enterprise No.1
Address: 5835 Golden Oaks Road, Paradise, CA 95969
Phone Number: (530) 228-4910 Fax (530) 877-9228

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

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Karen Bailey

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Name: Karen Bailey
Address: 7069 Catlett Road Bealeton, VA 22712
Phone Number: (703)553-8902

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 14, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA Facsimile

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Name: Sharon Allen Rasheed
Address: 912 Northedge Drive, Springfield, VA 22153
Phone Number: 202 662-4566

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

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Name: Dennise Diaz
Address: 1047 W. 14th St
Phone Number: 909 997-0948

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

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Name: Christina Noriego
Address: 2704 Sheridan Way San Bernardino CA
Phone Number: 909 770-3783

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Phone Number: 909 770-3783

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Senator Barbara Boxer

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

Re: Opposition to HR 2963 (Issa) to Transfer Land to the Pechanga Band

Dear Chairman Dorgan and Committee Members:

I submit this letter in opposition to HR 2963 (Issa) which would transfer land in Riverside and San Diego Counties to the Pechanga Band of Luiseno Indians, and I urge the Senate Committee on Indian Affairs to vote down HR 2963.

I oppose HR 2963 for several reasons. First of all, I oppose HR 2963 based on the Pechanga Band's actions to deprive and deny individuals of their basic human and civil rights.

The actions taken by Pechanga Tribal Officials -denial of due process, failure to provide equal protection of the laws, establishment of ex post facto laws, etc. - mirror those which led to the introduction and passage of the Indian Civil Rights Act of 1968 ("ICRA") which was intended to "... ***protect individual Indians from arbitrary and unjust actions of tribal governments***" and to secure for the individual American Indian the broad constitutional rights afforded all other American citizens.

While the ICRA clearly spells out actions which tribal governments are prohibited from participating in, Pechanga tribal officials have failed to comply with the ICRA and have routinely invoked "sovereign immunity" to escape prosecution for their actions. Although the tribal officials claim immunity from suit, this does not equate to innocence of action. No entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust.

In addition, HR 2963 does not benefit all the Indians who are associated with or have ties to the cultural and sacred sites located on and within the land proposed to be transferred. The lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials.

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> "The sole purpose of the acquisition is the preservation and protection of the Luiseno people's natural and cultural resources."

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Based on the Pechanga Band's actions, especially those associated with the Great Oak Ranch trust acquisition, I oppose HR 2963. Additionally, I ask to meet with you to discuss these issues; request an opportunity to testify in opposition to HR 2963; and ask that your Committee oppose HR 2963.

Respectfully submitted,

Name: Inge Cuevas
Address: 242 Walnuthaven West Covina CA
Phone Number:

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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George Allen

Name: George Allen
Address: 7220 Calvert Street, Annandale VA 22003
Phone Number: (703) 256-9214

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Name: JESSICA GUZMAN
Address: 20308 AVENUE 13, MADERA CA 93637
Phone Number: (559) 871-5295

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Name: PAUL AGUAYO
Address: 124 S. C ST MADERA, 93638
Phone Number: 559-673-5951

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Address: 1422 E. Palisade Fresno, CA 93720
Phone Number: (559) 439-2689

April 6, 2008

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Address: 3800 Wilson St Ope 327
Phone Number: 951-849-4581

Cc: Congressman Darrell Issa
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Respectfully submitted,

Name: Jesse Ochoa
Address: 7946 Sierra St Temecula Ca 92592
Phone Number: 951 377-5901

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

April 6, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Shawna Mallatt

Name: Shawna Mallatt
Address: 26281 Kathy Lane, Hmt 92544
Phone Number: 951-658-8505

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Address: 205 S VELARE ST ANAHEIM CA 92804
Phone Number: 714 828 8366

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Name: Andrew R. Gutierrez
Address: P.O. Box 1051 TONE, CA 95.640
Phone Number: (209) 274-2423

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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BARBARA ALVAREZ

Name: Barbara Alvarez
Address: 17146 Krameria Ave. Riverside, CA. 92504
Phone Number: 951-~~784~~ 789-1471

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Name: Bobbi Candelaria
Address: PO Box 442 San Jacinto Calif 92581
Phone Number: 951 - 927-0179

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: [illegible]
Address: 48355 Pechanga Rd Temecula 92592
Phone Number:

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> "The sole purpose of the acquisition is the preservation and protection of the Luiseno people's natural and cultural resources."

I would request a meeting with the Board of Supervisors to further discuss the issues above and my opposition of the sale of the Temecula Indian Cemetery to the Pechanga Band.

Respectfully submitted,

Name: Melinda Landeros
Address: 31575 Pepper tree St Winchester CA 92596
Email/Phone: (951) 602-2526

Cc: Governor Schwarzenegger
California Attorney General
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Darrell Issa
Congresswoman Bono Mack

April 6, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Name: Michael A Rios
Address: 3965 Chardonnay DR Perris CA 92571
Phone Number: 951-657-9033

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Respectfully submitted, John A Gomez Sr.

Name: John A. Gomez Sr.
Address: 20285 Calle Presa, Murrieta Calif 92562
Phone Number: (951) 304-2155

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Sandra Cubia Rios
Address: 3555 Kenwill St. Riverside, CA 92504
Phone Number: 951 203-0616

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Maurice Surtyke
Address: 2616 Taylor Ave. Ontario, Ca. 91761
Phone Number: (951) 440-2898

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Stacy Mestaz
Address: 16011 Butterfield Ranch Rd #626 Chino Hills 91709
Phone Number: 909) 706-9927

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: MARK LUCERO Mark Lucero
Address: 3915 LA SIERRA #21 92505
Phone Number: 951 687 1260

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Respectfully submitted,

Name: [illegible]
Address: 2[illegible] Pomona Long Beach CA 90803
Phone Number: 562 432 [illegible]

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

April 6, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Respectfully submitted, Juanita D. Sanchez

Name: Juanita D Sanchez
Address: 45690 Classic Way; Temecula, CA 92592
Phone Number:

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: JACKIE MADARIAGA
Address: 48165 PECHANGA RD TEMECULA CA 92592
Phone Number: remymadariaga@yahoo.com

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: REMY MADARIAGA
Address: 45165 PECHANGA RD. TEMECULA, CA 92592
Phone Number: (951) 505-3200 remymadariaga@yahoo.com

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: KELLY MABALIAGA
Address: 48165 PECHANGA RD TEMECULA, CA 92592
Phone Number: 951 216.5486

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Debra Lu Rodarte
Address: 15332 Tobacco Rd.
Phone Number: (909) 822-5616

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Address: 1431 West Fedriman S. Murietta, Ca. 92562
Phone Number:

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
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Equally as disturbing are recent remarks made by John Macarro, Chairman Macarro's brother and Pechanga's General Counsel regarding the Great Oak Ranch and the tribe's decision to build on the property despite testimony to the contrary: "Once the land is placed in trust, a tribe has complete zoning and planning authority over it and can change land uses..."

Considering Pechanga tribal officials' propensity to mislead and/or failure to comply with previous assertions to protect and preserve resources and not build on lands targeted for acquisition, can we really trust them in this instance?

Based on the Pechanga Band's actions, especially those associated with the Great Oak Ranch trust acquisition, I oppose HR 2963. Additionally, I ask to meet with you to discuss these issues; request an opportunity to testify in opposition to HR 2963; and ask that your Committee oppose HR 2963.

Respectfully submitted,

Name: Nancy J. Rios
Address: 3965 Chardonnay Dr
Phone Number: 951-657-9033

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

April 6, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

Re: Opposition to HR 2963 (Issa) to Transfer Land to the Pechanga Band

Dear Chairman Dorgan and Committee Members:

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I oppose HR 2963 for several reasons. First of all, I oppose HR 2963 based on the Pechanga Band's actions to deprive and deny individuals of their basic human and civil rights.

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While the ICRA clearly spells out actions which tribal governments are prohibited from participating in, Pechanga tribal officials have failed to comply with the ICRA and have routinely invoked "sovereign immunity" to escape prosecution for their actions. Although the tribal officials claim immunity from suit, this does not equate to innocence of action. No entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust.

In addition, HR 2963 does not benefit all the Indians who are associated with or have ties to the cultural and sacred sites located on and within the land proposed to be transferred. The lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials.

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Respectfully submitted,

Name: [illegible]
Address: 6145 Salem ST. Chino
Phone Number: sounders4god@yahoo.com

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

April 6, 2008

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Respectfully submitted,

Name: Danielle Tauzon
Address: 3729 Montrose Ave., La Crescenta, CA 91214
Phone Number: 909-305-2286 / 818-970-9669

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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I would request a meeting with the Board of Supervisors to further discuss the issues above and my opposition of the sale of the Temecula Indian Cemetery to the Pechanga Band.

Respectfully submitted,

Name: Janelle Tavizon
Address: 13729 Montrose Ave LaCrescenta, Ca 91214
Email/Phone: (818) 249-8040

Cc: Governor Schwarzenegger
California Attorney General
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Darrell Issa
Congresswoman Bono Mack

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Name: Janelle Tavizon
Address: 13729 Montrose Ave LaCrescenta, Ca 91214
Phone Number: (818) 248-2949

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

Date: 15 May 2008
From: The Hunter family
To: Democrats & Republicans
Company:

To all who may be involved in making this decision. Please remember the Bible says "He who draws a weapon against you, shall not prosper. Pechanga tribal council are evil & you can stop them.

May God Bless you
Karen Poole
816 331-0370

I am sending this in true faith.

12654

TUESDAY, MAY 13, 2008

Senate Committee On Indian Affairs: Please Call and ask them to say NO to Pechanga, a civil rights violator.

Dear Senate Committee and Senior Counsel Rollie Wilson,

Please do not consider transferring land to the Pechanga Band of Luiseno Indians at your meeting on Thursday.

The land should be transferred to all Indians with ties to the cultural and sacred sites. If a transfer occurs that fails to include ownership and use rights for all affected Indians, the Pechanga Band will do what it has done before and deny access to individuals who have undisputed cultural and lineal ties to the sacred sites but who are not considered Pechanga members.

I also oppose H.R. 2963 based on the Pechanga Band's actions to deprive and deny individuals of their human and civil rights. No entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust. The actions taken by the Pechanga Band -denial of due process, failure to provide equal protection of the laws, establishment of ex post facto laws, etc.- mirror those which led to the introduction and passage of the Indian Civil Rights Act of 1968 ("ICRA"). The ICRA was intended to "... **protect individual Indians from arbitrary and unjust actions of tribal governments"** and to secure for the individual American Indian the

WHY CONTINUE TO FIGHT?

broad constitutional rights afforded all other American citizens.

"WHY aren't more of your family fighting to gain back what was taken from them? Where are the elders?"

However, Pechanga Tribal officials have hid behind the Tribe's sovereignty to escape prosecution and to prevent the victims of their actions from seeking recourse for the injury and harm resulting from the **human and civil rights violations.** Although the tribal officials may be immune from suit, this does not equate to innocence of action.
Additionally, I would ask Congress to take a hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from a proposed transmission line project that threatened to negatively impact the Great Oak and other resources.

Over the course of several years, the Pechanga Band spent a great amount of time and money lobbying Congress to protect the Great Oak Ranch. Many meetings were held between Pechanga officials, government agencies, and Congressional members regarding the issue. During those meetings, it was stressed that the Great Oak and the Great Oak Ranch needed to be protected from construction impacts and the Pechanga Band had no intent to change the use of the ranch. In fact, Congressman Issa introduced at least one bill to protect the Great Oak and the Great Oak Ranch from the transmission project.

Today, with the Great Oak and the Great Oak Ranch spared from the transmission line project and the property transferred into trust, a portion of the Ranch has been turned into a staging area for on-going construction projects both on the Ranch and on adjacent properties. The character of the Ranch has been drastically changed and in no way reflects the "no change in use" mantra used by Pechanga officials in lobbying Congress and federal agencies for its protection and transfer to trust. Please do not consider a yes on **H.R. 2963**

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Name: Eleanor Ortiz
Address: 21621 Audubon Way, Lake Forest, California, 92630
Phone Number: 949-458-7101

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Dominique Lacerte
Address: 280 S. Refugio Rd., Santa Ynez, CA 93460
Phone Number: (805) 680-7667

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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Name: Arthur J. Lacerte
Address: 220 S. REFUGIO RD
Phone Number: SANTA YNEZ, CA. 93460 (805) 691-1666

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Name: Eleanor Ortiz
Address: 21621 Audubon Way, Lake Forest, California, 92630
Phone Number: 949-458-7101

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

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838 Hart Senate Office Building
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Name: Bridgette Venus
Address: 427 S. El Molino Ave. Unit #2 Pasadena, CA 91101
Phone Number: 626-792-9151

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

May 13, 2008

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838 Hart Senate Office Building
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Phone Number: SANTA YNEZ, CA. 93460 (805) 691-1666

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Name: Dominique Lacerte
Address: 280 S. Refugio Rd., Santa Ynez, CA 93460
Phone Number: (805)680-7667

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

April 6, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
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Name: Juanita D. Sanchez
Address: 45690 Classic Way; Temecula, CA 92592
Phone Number:

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

From: John Gomez [mailto:pechangajg@msn.com]
Sent: Tuesday, May 13, 2008 10:56 PM
To: Indian-Affairs, comments (Indian Affairs)
Subject: Please vote "NO" on HR 2963

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
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Fax: (202) 228-2589

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John A. Gomez, Jr.
41801 Corte Valentine
Temecula, CA 92592
(951)941-4943

From: robt4enterprise1@aol.com
Sent: Wednesday, May 14, 2008 4:11 AM
To: Indian-Affairs, comments (Indian Affairs)
Subject: HR 2963 (Issa) - Transfer of Land to Pechanga Band

Dear Chairman Dorgan and Committee Members:

My tribe and I wish to go on record with your Committee as strongly opposing HR 2963 (Issa) and I respectfully request that your committee vote in opposition to this Bill as well. HR 2963 is an effort to transfer land in Riverside and San Diego Counties in California to the Pechanga Band of Luiseno Indians.

It is appropriate that your committee closely examine previous transfers of land into trust for the Pechanga Band such as the Great Oak Ranch and other properties where the intended land use has been misrepresented by Penchanga's Chairman Mark Macarro. The land at Great Oak Ranch was specifically transferred into trust for the Pechanga Band in order to protect it's invaluable resources from development. Yet today, that ranch has been turned into a staging area for on-going construction projects associated with the Pechanga casino complex. This is contrary to Charman Macarro's statement that the "sole purpose of the acquisition is the preservation and protection of the Luiseno people's natural and cultural resources".

On the land now being considered under HR 2963 for transfer into trust for the Pechanga Band, HR 2963 falls short by failing to benefit all Indians who have ties to the cultural and sacred sites on this land. No transfer should be considered until this issue is addressed because the Pechanga Band will most assuredly deny access to this land just as they have at the Great Oak Ranch. Protections must be included for these individuals with undisputed ties to these sites.

Additionally, our primary concern is the actions of Pechanga tribal officials in denying due process and equal protection under the law for it's tribal members. Tribal officials have routinely established expos facto laws and failed to comply with the terms of the Indian Civil Rights Act. This is disturbing trend that should not be considered acceptable behavior by any government.

We respectfully request a NO vote from your Committee on HR 2963.

Sincerely,

Robert Edwards, Chairman
Indians of Enterprise No. 1
5835 Golden Oaks Road
Paradise, CA 95969
Robt4Enterprise1@aol.com
Phone (530) 228-4910

From: Allen-Hensley, Debra A [mailto:debra.a.allen-hensley@verizonbusiness.com]
Sent: Wednesday, May 14, 2008 1:12 PM
To: Indian-Affairs, comments (Indian Affairs)
Subject: Opposition to HR 2963

May 14, 2008

Senate Committee on Indian Affairs VIA Email
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

Re: Opposition to HR 2963 (Issa) to Transfer Land to the Pechanga Band

Dear Chairman Dorgan and Committee Members:

I submit this letter in opposition to HR 2963 (Issa) which would transfer land in Riverside and San Diego Counties to the Pechanga Band of Luiseno Indians, and I urge the Senate Committee on Indian Affairs to vote down HR 2963.

I oppose HR 2963 for several reasons. First of all, I oppose HR 2963 based on the Pechanga Band's actions to deprive and deny individuals of their basic human and civil rights.

The actions taken by Pechanga Tribal Officials -denial of due process, failure to provide equal protection of the laws, establishment of ex post facto laws, etc. - mirror those which led to the introduction and passage of the Indian Civil Rights Act of 1968 ("ICRA") which was intended to ***"... protect individual Indians from arbitrary and unjust actions of tribal governments"*** and to secure for the individual American Indian the broad constitutional rights afforded all other American citizens.

While the ICRA clearly spells out actions which tribal governments are prohibited from participating in, Pechanga tribal officials have failed to comply with the ICRA and have routinely invoked "sovereign immunity" to escape prosecution for their actions. Although the tribal officials claim immunity from suit, this does not equate to innocence of action. No entity that participates in, supports, or otherwise partakes in human and/or civil rights violations should benefit from the public trust.

In addition, HR 2963 does not benefit all the Indians who are associated with or have ties to the cultural and sacred sites located on and within the land proposed to be transferred. The lands identified for transfer are lands associated with all Luiseno people, not just the Pechanga Band, a fact acknowledged by Pechanga tribal officials.

Therefore, the land should be transferred to all Indians with ties to the cultural and sacred sites. If a transfer occurs that fails to include ownership and use rights for all affected Indians, the Pechanga Band will deny access, just as they have with the Great Oak Ranch and other properties, to individuals who have undisputed cultural and lineal ties to the sacred sites seeking to be protected by HR 2963.

Additionally, I would ask you to take a hard look at lands previously transferred to trust for the Pechanga Band. Specifically, the Great Oak Ranch was transferred with the intent of protecting it and its invaluable resources from development. In fact, Pechanga Chairman Macarro testified to the United States House of Representatives Committee on Resources on April 17, 2002:

> "The sole purpose of the acquisition is the preservation and protection of the Luiseno people's natural and cultural resources."

And, when specifically asked if the Pechanga Tribe had "any plans for development of any kind on the Great Oak Ranch property", Chairman Macarro's response was as follows:

> "No, we don't. As stated in our application to (Department of the) Interior/BIA, we stated or have designated there is no change in use in the property, and the intended use and purpose is to preserve and protect the resources that are there."

Chairman Macarro was then asked if the Pechanga tribe planned to use the Great Oak Ranch for gaming purposes or any other purposes other than what you have just outlined. His response was, "No, the tribe does not".

Fast forward to today, the Ranch has been turned into a staging area for on-going construction projects both on the Ranch and associated with the casino complex A golf course and other amenities associated with the Pechanga Resort and Casino have been built on the Ranch. Needless to say, the character of the Ranch has been drastically changed and in no way reflects the "no change in use" testified to and used by Pechanga tribal officials in lobbying Congress, your Committee, and federal agencies for its protection and transfer to trust.

Equally as disturbing are recent remarks made by John Macarro, Chairman Macarro's brother and Pechanga's General Counsel regarding the Great Oak Ranch and the tribe's decision to build on the property despite testimony to the contrary: "Once the land is placed in trust, a tribe has complete zoning and planning authority over it and can change land uses..."

Considering Pechanga tribal officials' propensity to mislead and/or failure to comply with previous assertions to protect and preserve resources and not build on lands targeted for acquisition, can we really trust them in this instance?

Based on the Pechanga Band's actions, especially those associated with the Great Oak Ranch trust acquisition, I oppose HR 2963. Additionally, I ask to meet with you to discuss these issues; request an opportunity to testify in opposition to HR 2963; and ask that your Committee oppose HR 2963.

Respectfully submitted,

Name: Debra Allen-Hensley
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Phone Number: 703-222-0231

May 13, 2008

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 228-2589

VIA US Mail and Facsimile

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Respectfully submitted,

Name: Fred Sartuche Jr.
Address: 1020 E San Joaquin Ave, Tulare ca 93274
Phone Number: 559-687-9700

Cc: Congressman Darrell Issa
Senator Harry Reid
Senator Dianne Feinstein
Senator Barbara Boxer

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